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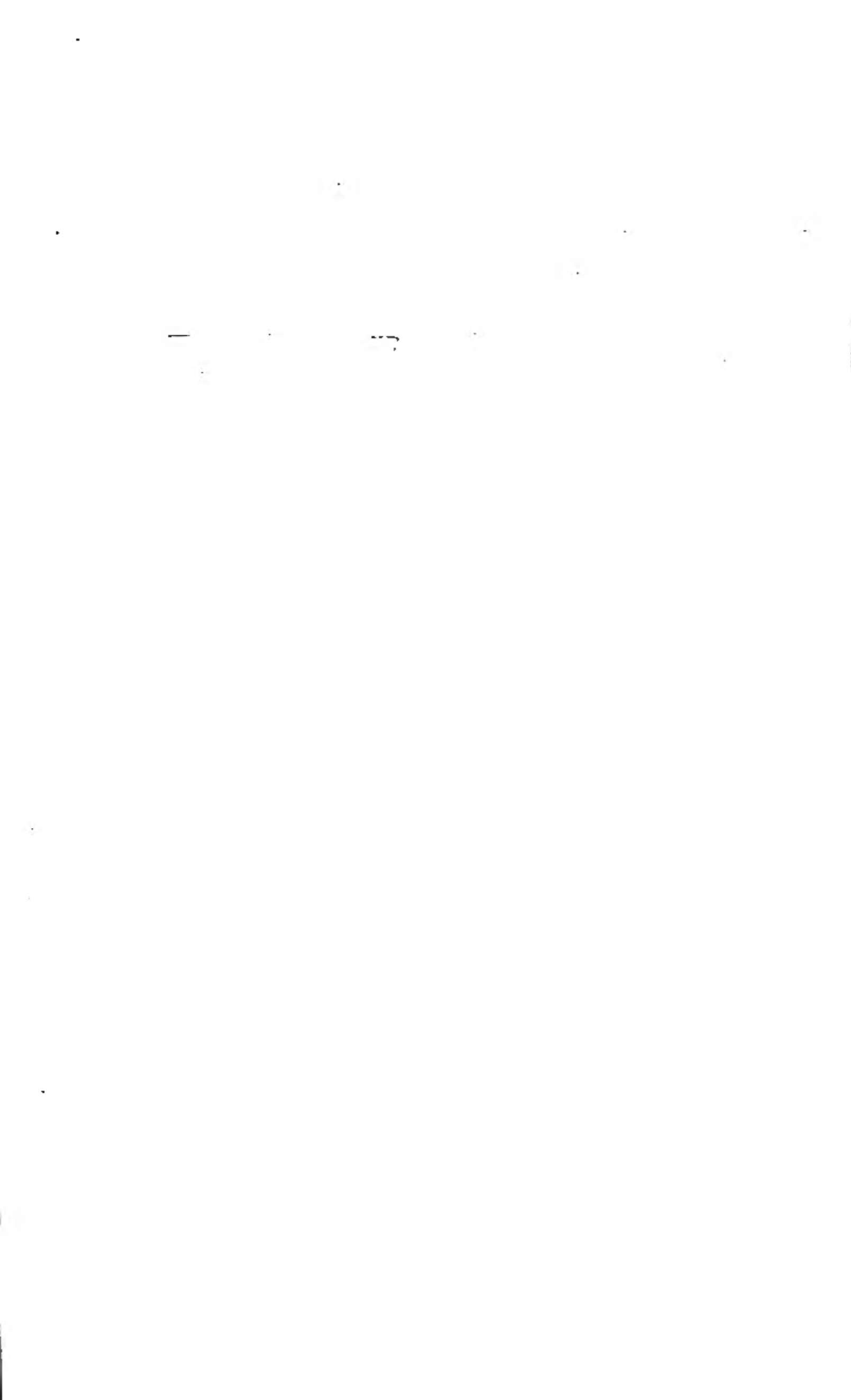
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PROCEEDINGS AND DEBATES

OF THE

# CONSTITUTIONAL CONVENTION

OF THE

5-5-819

STATE OF NEW YORK,

HELD IN 1867 AND 1868,

IN THE

CITY OF ALBANY.

---

REPORTED BY EDWARD F. UNDERHILL,  
OFFICIAL STENOGRAPHER.

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VOLUME I.

FROM PAGE 1 TO 800, WITH INDEX.

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ALBANY:  
WEED, PARSONS AND COMPANY,  
PRINTERS TO THE CONVENTION.  
1868.

IN CONVENTION, *Feb.* 27, 1868.

*Resolved*, That there be printed, in addition to the number already printed, a sufficient number of copies of the debates, documents and journals, to furnish each of the members with three copies ; and also one copy each to the Mayor and the members of the Common Council of the city of Albany, and one copy each to the State Law Libraries at Rochester and Syracuse, the law libraries of the several judicial districts, the Law Institute, the Astor Library, and the New York Historical Society in the city of New York, and the Young Men's Associations of the cities of Albany and Troy.

LUTHER CALDWELL, *Secretary*.





5.3.11  
May 11 S.S.

# PROCEEDINGS AND DEBATES.

ALBANY, Tuesday, June 4, 1867.

Pursuant to chapter 194, of the Laws of 1867, being an Act to provide for a Convention to revise and amend the Constitution, passed March 29, 1867, the Delegates duly elected thereto assembled at the Capitol in the city of Albany.

At eleven o'clock, A. M., the Convention was called to order by Hon. FRANCIS C. BARLOW, Secretary of State.

Rev. W. B. SPRAGUE, D.D., of Albany, addressed the throne of Grace in prayer, in words as follows:

Almighty and all gracious Father, we bow before Thee as the God of all the Nations of the earth. Thou liftest up one and puttest down another, and all are alike under Thy control. We recognize Thy gracious providence in the ordering of our lot, ever since our existence as a Nation commenced. We thank Thee that here, while yet this was savage ground, a seed was sown which has sprung up and expanded into a mighty tree, that has sent forth its boughs to the ends of the earth, and whose leaves we believe will be for the healing of the Nations. We thank Thee, that though Thou hast in retribution for our aggravated sins, sometimes inflicted upon us grievous National calamities, yet Thou hast in Thine own best time delivered us out of them, so we are now in the full enjoyment of our liberties and our institutions. We thank Thee specially for the favor with which Thou hast regarded this State in which our lot is cast; and we thank Thee for all the means of intellectual, moral and Christian culture, which we have here enjoyed. We thank Thee for all the intelligence, order and social elevation, which here prevail. We thank Thee for the good influence this State has exerted, not merely upon the sister States of the Union, but upon other Nations of the globe. We thank Thee for the wisdom of our fathers in which originated the Constitution under which we live, and for the wisdom of their successors by which it has been, from time to time, improved; and for the wisdom of the present generation, which aspires still to amend and, if it may be, to perfect the work of those who have gone before them. And now, we desire gratefully to acknowledge Thine hand in all the propitious circumstances which attend this occasion. We invoke Thy blessing upon this large deliberative assembly, who are assembled for one of the most important purposes which can occupy mortals. We ask, first of all, that Thou would impress them deeply with a sense of the importance of the object which has convened them together, and grant that they may rightly understand their duty and have grace and strength given them faithfully to discharge it; and that they may discharge their duty successfully, wilt Thou grant to them to-day a fresh baptism of the spirit of christian patriotism and good will toward each other; let them realize their responsibility, not only to those whose interests they are immediately charged with, but toward that God who has placed them in this important position. Grant, most merciful Father, that every discussion may be conducted with candor and courtesy and unity, that every measure may be adopted with wisdom, and that the result of all those deliberations may be to add to the stability of our institutions, and also to intensify our influence as a State, and to bring us into more intimate relations with the great Ruler of the world. Now grant that all the members of this Convention may be under Thy gracious care, during their residence in the midst of us, and wilt Thou watch over and preserve their families during the period of their separation from them; and when they shall have accomplished the object of their meeting, may they be returned safely to their homes, rejoicing in Thy goodness—rejoicing in the approval

5-22-31 F.W.N.



of a good conscience—rejoicing in the approbation of their contemporaries—rejoicing in the assurance that their memories shall be embalmed by a grateful posterity. All these blessings, together with the forgiveness of our sins, we ask in the name of Jesus, our Redeemer—Amen.

Hon. ERASTUS CLARK, Deputy Secretary of State, then proceeded to call the roll of the Convention. All the delegates responded except the following:

*Delegates at large.*—Homer A. Nelson, Francis Keruan, John Magee.

*District Delegates.*—6th. Abraham D. Russell; 8th. John E. Develin; 10th. Stephen A. Fullerton; 13th. Amasa J. Parker.

The Secretary of State then proceeded to administer the constitutional oath to the following delegates:

#### DELEGATES AT LARGE.

Waldo Hutchins, William M. Evarts, George Opdyke, Augustine J. H. Duganne, George William Curtis, Horace Greeley, Joshua M. Van Cott, Ira Harris, Erastus Cooke, Martin I. Townsend, William A. Wheeler, Charles Andrews, Tracy Beadle, Charles J. Folger, Erastus S. Prosser, Augustus Frank, Augustus Schell, George Law, Henry C. Murphy, David L. Seymour, Jacob Hardenburgh, Smith M. Weed, Alonzo C. Paige, George F. Comstock, Henry D. Barto, Sanford E. Church, Henry O. Chesebro, Joseph G. Masten, Marshal B. Champlain.

#### SENATORIAL DISTRICT DELEGATES.

*First District.*—Selah B. Strong, Solomon Townsend, William Wickham, Erastus Brooks.

*Second District.*—John P. Rolfe, Daniel P. Barnard, Charles Lowrey, Walter L. Livingston.

*Third District.*—Teunis G. Bergen, William D. Veeder, John G. Schumaker, Stephen I. Collahan.

*Fourth District.*—Charles P. Daly, Samuel B. Garvin, Abraham R. Lawrence, Jr., John E. Burrill.

*Fifth District.*—Nathaniel Jarvis, Jr., Elbridge T. Gerry, Henry Rogers, Norman Stratton.

*Sixth District.*—Frederick W. Loew, Gideon J. Tucker, Magnus Gross.

*Seventh District.*—Samuel J. Tilden, Edwards Pierpont, James Brooks, Anthony L. Robertson.

*Eighth District.*—Richard L. Larremore, Claudius L. Monell, William Hitchman.

*Ninth District.*—Abraham B. Conger, Abraham B. Tappan, Robert Cochran, William H. Morris.

*Tenth District.*—William H. Houston, Clinton V. B. Ludington, Gideon Wales.

*Eleventh District.*—B. Platt Carpenter, John Stanton Gould, Wilson B. Sheldon, Francis Silvester.

*Twelfth District.*—John M. Francis, Jonathan P. Armstrong, Cornelius L. Allen, Adolphus F. Hitchcock.

*Thirteenth District.*—Erastus Corning, William Cassidy, James Roy.

*Fourteenth District.*—Marius Schoonmaker, Solomon G. Young, Manly B. Mattice, Ezekiel P. More.

*Fifteenth District.*—Alembert Pond, Hezekiah Baker, Judson S. Landon, Horace E. Smith.

*Sixteenth District.*—George M. Beckwith, Matthew Hale, Nathan G. Axtell, Andrew J. Chertree.

*Seventeenth District.*—William C. Brown, Edwin A. Merritt, Leslie W. Russell, Joel J. Seaver.

*Eighteenth District.*—Edward A. Brown, Marcus Bickford, James A. Bell, Milton H. Merwin.

*Nineteenth District.*—Richard U. Sherman, Theodore W. Dwight, Benjamin N. Huntington, George Williams.

*Twentieth District.*—Elijah E. Ferry, John Eddy, Ezra Graves, Oliver B. Beals.

*Twenty-First District.*—Elias Root, Lester M. Case, M. Lindley Lee, Loring Fowler.

*Twenty-Second District.*—Thomas G. Alvord, L. Harris Hiscock, Patrick Corbett, Horatio Ballard.

*Twenty-Third District.*—Elizur H. Prindle, John Grant, Hobart Krum, Samuel F. Miller.

*Twenty-Fourth District.*—Stephen D. Hand, Charles E. Parker, Oliver H. P. Kinney, Milo Goodrich.

*Twenty-Fifth District.*—George Rathbun, Chas. C. Dwight, Leander S. Ketcham, Ornon Archer.

*Twenty-Sixth District.*—Elbridge G. Lapham, Angus McDonald, Sterling G. Hadley, Melatiah H. Lawrence.

*Twenty-Seventh District.*—Elijah P. Brooks, David Rumsey, Abraham Lawrence, George T. Spencer.

*Twenty-Eighth District.*—Jerome Fuller, Lorenzo D. Ely, William A. Reynolds, Freeman Clark.

*Twenty-Ninth District.*—Seth Wakeman, Levi F. Bowen, Thomas T. Flagler, Ben Field.

*Thirtieth District.*—Edward J. Farnum, Isaac L. Endress, John M. Hammond, William H. Merrill.

*Thirty-First District.*—Israel T. Hatch, Isaac A. Verplanck, Allen Potter, George W. Clinton.

*Thirty-Second District.*—George Barker, Augustus F. Allen, Norman M. Allen, George Van Campen.

Mr. FOLGER moved that the Convention do now proceed to elect a president of the Convention, and that two tellers be appointed by the chair to count the votes.

Mr. STRONG—I would prefer, as there is but one candidate, that he should be elected by acclamation.

The CHAIR—The statute requires that the president shall be elected by ballot.

Mr. STRONG—I withdraw my motion.

Mr. J. BROOKS—Before we proceed to an election by ballot for the President of this Convention, I am requested by some of my fellow-members to say a few words. The minority of the members of this body assembled this morning for consultation, and acting upon the wise precedent which the Legislature of this State established at its last session, deemed it wise to present no particular candidate to this body. This Convention has assembled for an important object—namely—to revise the organic law of this State. Looking to the proceedings of the Legislature, we have seen with great approbation that that body enacted a law which secured the election of sixteen Republican and sixteen Democratic members throughout the State at large, and thereby gave an admonition, if they did not establish a precedent, which seemed to justify us, or at least to suggest to us that this Constitutional Convention, about to assemble for the formation of our great organic law, should not be organized for

party purposes or for party organization; and though there were precedents to the contrary in the history of the State, yet that action of a Legislature opposed to us in political feeling, was deemed so wise that we have acquiesced in it, and have presented no particular candidate to be voted for by the minority, leaving each member to vote for whomsoever he may please. We have deeply regretted that others have deemed it wise to take a contrary course; and though it is very natural and proper, and no matter of complaint by us that the majority of this body should select its own men for officers, yet, it is matter of regret to us that in a Constitutional Convention, which has met to form the organic law that shall govern this State, the presiding officer should go into the chair so bound down by party ties and party obligations as not to feel himself absolved from the party that created him, and respect the views of the minority represented on the floor of this house. And we have apprehended with fear, and we certainly have a perfect right to fear, from what we have read in this morning's papers of the action of a body that met elsewhere, that the action of this Convention in selecting a presiding officer will be that of a mere party organization, and deprive us in the minority of those equitable and just rights which the minority ought always to have, not only in a legislative body, but more especially in a body like this, whose action will establish for future time the great organic law of this State. And we have the more regretted it, not only that they have elected all the other officers, but particularly one officer in the same manner, who is to be—I will not say the recording angel of this body—but who is to take down every word we utter for the future consideration of those who may come after us, and who wish to consult the Constitution we may frame. We have thought the stenographer of this body, if not the recording angel, should in the spirit of equity and justice make a record which will be free to all and just to all. And though we have no doubt that the officer they have selected will do his duty in justice to all, from his high professional reputation, yet we have deeply regretted that his selection by a party should seem to place him under any party obligations whatsoever, that would make his record more favorable to one side than it would be to the other, in a minority in this body. I have deemed it proper to make these few brief remarks prior to the ballots that the minority in this body will give, not at all in censure or condemnation of the majority, but in explanation of the course that we have taken, and as a justification of that course to our people throughout this State.

The motion of Mr. Folger was then put to the vote of the Convention, and was declared carried.

The Chair appointed as tellers, Mr. Curtis of Richmond, and Mr. Cassidy of Albany.

The Convention proceeded to vote for President and the Chair announced the result as follows:

The whole number of votes cast was 149, of which

William A. Wheeler, received,.....	100
Henry C. Murphy, .....	9
Amasa J. Parker, .....	5

Erastus Corning,.....	4
Sanford E. Church,.....	4
George F. Comstock,.....	3
S. B. Garvin, .....	3
Selah B. Strong,.....	2
A. C. Paige,.....	2
G. W. Clinton,.....	2
I. A. Verplanck,.....	2
Samuel J. Tilden,.....	2
L. B. Master,.....	1
G. W. Curtis,.....	1
I. T. Hatch,.....	1
C. P. Daly,.....	1
George Law,.....	1
Gideon J. Tucker,.....	1
Edwards Pierrepont,.....	1
Marshall B. Champlain,.....	1
Allen Potter,.....	1

William A. Wheeler having received a majority of the votes of the Convention, the Chair announced that he was duly elected President of the Convention, and appointed Messrs. Harris and Murphy a committee to conduct the President elect to the chair.

On taking his seat the President said:

GENTLEMEN OF THE CONVENTION:—With a grateful appreciation of your kind partiality, I enter with unfeigned diffidence upon the discharge of the duties to which, by your ballots, you have assigned me, encouraged, nevertheless, by the conviction that honest efforts faithfully and impartially to administer the trust, will secure to me a just degree of forbearance and support. We are, in the history of our State, the fifth body convened at the command of its sovereign people for the especial consideration of its fundamental law. We are to review, and seek better to adapt to the demands of our time, the work of our predecessors, embracing as well men who carried the direct inspiration of the Revolution into their labors, as many others of a later period whose names gild our historic page, and to all of whose combined patriotism and wisdom we are indebted for the imperial and priceless heritage we enjoy. To remold the organic law of the first Commonwealth of the world, Empire in name and Empire in fact, in which law are to rest the guarantees and safeguards of the rights, the interests and the welfare of our present and future millions of people, is a task challenging our best efforts and our highest wisdom. Of the work confided to us, I will not detain you to speak in specific detail. Prominent however is the devising of means to secure the full benefits of that system of public works so closely interwoven with our growth and prosperity, which has stimulated as well our own as the agriculture of the great West, which has created cities and villages, and made vast contributions to our internal and foreign commerce—the regulation and government of our State institutions and multiform corporations, municipal and other—a wise, just and economic adjustment of State finance—the conferring of such legislative powers as shall insure honest and general legislation, and an improved system of Judiciary which shall supply efficient remedy and prompt redress for every violation of the rights of person or property. But, gentlemen, let us not forget that it is

not in these things alone, that the true life of a State consists. It consists rather, as has been aptly said elsewhere, in that public spirit which is the soul of Commonwealths, without which empire has no glory, and the wealth of nations is a source of corruption and decay. I mean that public spirit best illustrated in our recent great conflict, by the sublime national enthusiasm, the matchless patience, the heroic strength, and the unstinted sacrifice of blood and treasure, by all of which we rescued from the toils and grasp of treason our imperiled nationality. A State will be great, prosperous and stable in the degree in which it possesses this spirit. Its germ is free, equal, conscious, intelligent and enfranchised manhood. To develop and foster such manhood is the highest civil duty which can engage the patriotic statesman. We owe it to the inspiration of the age in which we live—we owe it to the cause of universal civil liberty—we owe it to the struggling liberalism of the old world—we owe it to the memories of the myriads of our martyred dead who sleep their last sleep upon countless battle-fields, to make proclamation, by the sovereign majesty of this great State, that every man within the limits of its broad domain, of whatever race or color, or however poor, helpless or lowly he may be, in virtue of his MANHOOD, is entitled to the full enjoyment of every right appertaining to the most exalted citizenship. This done, we have only to secure the means of free, universal education—thus keeping power and intelligence hand in hand—to realize the highest ideals of popular Government. Such, gentlemen, is the mission to which we are called. We ought, rising above the low grounds of partisanship, to inspire our work with an earnest, whole-souled patriotism, enlivened, regenerated and sanctified by all the trials of the fiery crucible through which we have just passed. It is our exalted privilege to initiate the movement of bringing our State up to the full standard of the theories of a true Republican Government. In the progress of the march to that destiny to which the God of Nations is unmistakably leading us, we have reached a higher plane of our national life. The duty is laid upon us of reaping from the great struggle through which we have made this advance, such fruits, such influence and such power as shall carry us to the highest attainable points of enlightened and Christian civilization. In this beneficent work, New York should maintain her supremacy among her sister commonwealths, leading in the march of human liberty and human progress, as she led in marshaling the armies which won them for all nations, kindreds, tongues and peoples who take shelter under the folds of the banner of the Republic. Let us, whose action is so vitally to affect the future of our State, trusting to that Superior Power so signally manifested in our National behalf in the battling years from which we have just emerged, and with confirmed faith in a Government "of the people, by the people, and for the people," be true to our trust, true to ourselves, and true to truth. So shall we faithfully meet and wisely discharge the obligations of our day and generation, and advance the growing grandeur of the towering State, whose citizenship is our highest, proud-

est boast. Again thanking you gentlemen, for your kind consideration, I await your further pleasure.

Mr. HARRIS offered the following resolution:

*Resolved*, That Luther Caldwell be and he is hereby appointed Secretary of the Convention.

Which was adopted.

Mr. CALDWELL thereupon took the Constitutional oath of office which was administered by the President.

Mr. FOLGER offered the following resolution:

*Resolved*, That Edward F. Underhill be and he is hereby appointed Stenographer to the Constitutional Convention.

Which was adopted.

Mr. ELY offered the following resolution:

*Resolved*, That Samuel C. Pierce be and he is hereby appointed Sergeant-at-Arms of this Convention.

Which was adopted.

Mr. ARCHER offered the following resolution:

*Resolved*, That John H. Kemper be and he is hereby appointed Assistant Sergeant-at-Arms of this Convention.

Which was adopted.

Mr. SHERMAN offered the following resolution:

*Resolved*, That until the adoption of permanent rules for the regulation of the proceedings of the Convention, the rules of the Assembly of this State be followed as far as they may be applicable; and that a select committee of five be appointed by the President to report a code of rules suited to the wants of the Convention.

Which was adopted.

MR. BELL offered the following resolution:

*Resolved*, That the Secretary be requested to confer with the regular clergy of this city, and request them to make such arrangements, that the daily sessions of this Convention may be opened by prayer.

Which was adopted.

Mr. HARRIS offered the following resolution:

*Resolved*, That a committee of two members from each judicial district be appointed by the President, whose duty it shall be to consider and report the best practical mode of proceeding to revise the constitution, which was adopted.

MR. SILVESTER—The Legislature in the act which it passed to provide for this Convention to revise and amend the Constitution, provided for the election of certain officers by the Convention, and of the appointment of certain other officers by the President and Secretary. There seems in the act which was passed by the Legislature to be no provision for the appointment of a postmaster for the Convention. Every person familiar with the proceedings of any deliberative body is aware that they have found it necessary for the correct transaction of business to have a postmaster. It will be necessary for us very often to have conference with our constituents, to receive communications from them and send communications to them, and for that purpose a postmaster of this body would be very essential. Undoubtedly the Legislature omitted to provide for the election and appointment of a postmaster through inadvertence.

The PRESIDENT—The Chair would remind the gentleman that there is no question before the convention.



**MR. SILVESTER**—I propose to introduce the resolution and to preface it with a few remarks showing the pertinency of the resolution.

The **PRESIDENT**—If the gentleman will first offer his resolution and base his remarks upon it, it will be a little more in order.

**Mr. SILVESTER** then offered the following resolution:

*Resolved*, That Peter J. Hotailing, of Columbia, be and hereby is, appointed Postmaster for this Convention.

**Mr. GREELEY**—I trust this resolution will not be adopted.

The **PRESIDENT**—The gentleman from Columbia has the floor.

**Mr. SILVESTER**—I ask that the body of the memorial that I sent up to the Clerk's desk may be read.

The Secretary read the memorial as follows:—

"The undersigned, members of the Legislature of 1867, hereby testify to the efficiency and strict attention to the duties of his office of Assistant Postmaster to the Assembly, of Mr. Peter J. Hotailing, and we sincerely recommend him to the Constitutional Convention as a suitable person to perform the duties of Postmaster to that body."

**Mr. SILVESTER**—The recommendation of the Legislature bears date subsequently to the act passed to provide for the Convention, showing that the Legislature intended that this Convention should have the benefit of these labors of a Postmaster, although in the act itself they had omitted to provide for the election and appointment of such an officer. Mr. Hotailing seems to have performed these duties to the satisfaction of the Legislature, and is eminently competent to perform the duties of this body, he having had the experience of a postmaster.

**Mr. FOLGER**—I merely rise to notice a remark made by the gentleman from Columbia [Mr. Silvester] that the omission to provide for a postmaster was through the inadvertence of the Legislature. That subject, sir, was considered in the Committee on Judiciary and in the Committee of Conference upon the bill which has called this body into existence, and it was considered when we provided for a sergeant-at-arms, assistant sergeant-at-arms and eight door-keepers, that we provided for a sufficient force to protect this body from invasion from abroad, and ample force to conduct into and out of it, all the mail matter we might reasonably send to or receive from our constituents. Theoretically, in the Senate of this State, there is no postmaster; but practically, the deputy sergeant-at-arms always officiates in that capacity, and supplies every want for an office of that description. Just so in preparing this bill, there was no inadvertence; we thought the deputy sergeant-at-arms might very well, without taking a great deal of time from duties which would necessarily call him elsewhere, conduct the postal department of this Convention as has been done in the Senate. Because, we can readily perceive, that there is quite a difference in the matter of detail of the proceedings of this Convention and the proceedings of the Legislature. Here we deal with generalities for the whole State, and not for special localities, and there will not be so

much need of correspondence between us and those we may leave at home, as there would be if we sat here passing one thousand bills, as was done last year. For that reason the committee, and I think the Legislature, thought, that the officers in the bill were amply sufficient to carry out all the duties of this Convention, and the deputy sergeant-at-arms might very well act as postmaster to this body. Then, in addition to that, there is another consideration, and that is, that the Comptroller will not pay this officer, if he should be elected. I know that he will not pay any money, if it is not provided for in any law, and the law provides for no such office. When the postmaster, if he should be elected, applies to him for payment, he will say: "Where is the act that will allow me to draw my warrant for this upon the Treasurer?" and it will not be found.

**Mr. SILVESTER**—In respect to the observation that the Comptroller will not pay the postmaster if elected, I would merely answer in reply, that the Convention of 1846, I believe, elected several officers who had not been provided for in the act, and a subsequent Legislature provided for the payment of those officers. I suppose the same rule could be adopted in this case; and this gentleman, if he be elected, or any gentleman elected or appointed Postmaster, would run the risk of being paid by the Legislature. I did not suppose it was necessary to protect us from invasion from abroad. I do not want any further legislation with that view, but it was rather to further invasion by the people and to get suggestions of their views.

**Mr. GREELEY**—I trust that this Convention will not commence its labors by violating the laws of the State, in regard to the officers provided for. Certainly eight door-keepers must be four too many, and two sergeants-at-arms at least one too many, and we could spare one of these officers who could act as postmaster. I trust that this resolution will not pass.

**Mr. STRATTON** offered the following amendment to the resolution offered by Mr. Silvester:

*Resolved*, That the Deputy Sergeant-at-Arms be and he is hereby instructed to discharge the duties of Postmaster of Convention.

Which was adopted.

**Mr. SHERMAN** offered the following amendment to the amendment offered by Mr. Stratton:

"And that the Sergeant-at-arms detail from among the messengers a sufficient number to act as assistants and messengers to the Postmaster."

Which was adopted.

The question was taken on the resolution offered by Mr. Silvester, as amended, and it was declared adopted.

**Mr. FOLGER** offered the following resolution:

*Resolved*, That when the Convention adjourns this day, it adjourn until 4 o'clock P. M., and that there be a session beginning at that hour for the purpose of drawing for seats in such manner as shall be determined.

Which was adopted.

**Mr. FULLER** offered the following resolution:

*Resolved*, That until otherwise determined, this Convention will meet in this Assembly Chamber daily at 11 o'clock, A. M.

Which was adopted.

The Constitutional oath of office was then administered by the President to Samuel C. Pierce, Sergeant at Arms, John H. Kemper, assistant Sergeant at Arms, and Edward F. Underhill, Stenographer to the Convention.

Mr. GREELEY—I desire to offer the following resolution of inquiry, which if it is held to be too soon, I will withdraw it. I will read the resolution and then make a few remarks.

*Resolved*, That the Comptroller be requested to prepare and communicate to this Convention a tabular statement showing:

1. The original cost of the several canals of this State, including that of any enlargement or extension thereof.

2. The aggregate cost of each canal as aforesaid, including the superintendence, repairs and legal interest on the cost of construction up to the close of the last fiscal year.

3. The aggregate receipts or income of each canal computed in like manner.

4. The net cost (or profit) of each canal up to the close of the last fiscal year.

5. The annual receipts or income of the State from each canal, with the annual cost of superintendence and repair, respectively of such canals up to the close of the last fiscal year.

The gentleman from New York, (Mr. Brooks) who has addressed this Convention I think rather out of season, made some remarks as to party aspects of organization, which I wish to say a word about in speaking to this resolution. I offered this in endeavoring to get the clearest and fullest statement possible with regard to our canals, being determined to act here with the most entire independence of party upon this as upon every other question, with a single view to the best interests of the whole people of the State. I was among the gentlemen who met here last evening to consult and consider the proper mode of organization of this Convention. I did so as I could not have done otherwise, simply because I believed from observing the facts all around me throughout the last two or three years, that the Democratic party of this State did not consider it wise,—or perhaps I should say timely—now to enter upon the work of revising the Constitution of our State. They had a perfect right so to believe. I met them at the polls acting in this spirit, and I found them in the press acting in this spirit, and, in my judgment, if there had been a Democratic majority in the Legislature last winter, no Convention would now be assembled, or this year held. I regard as imposed on the Republican majority of this Convention the duty of revising the Constitution. I apprehend when we meet at the polls, no matter what the Constitution shall be, it will be boldly confronted by the general opposition of the party which is not in the majority in this Convention. I think with reference to that fact, that the action of this Convention—the Constitution as we shall frame it—will be met with a political party opposition, no matter what it shall contain. I deem it necessary and proper that the political majority in this Convention shall take upon themselves the labor and responsibility of organization, and, if I may say so, of directing its action.

Mr. ALVORD—I believe, sir, I am correctly

informed, when I state that, under the law by which we are organized, a manual will be laid upon our desks which will contain in substance, and I believe in form, an entire answer to the resolution of the gentleman from Westchester. (Mr. Greeley). Each and every requisite of that resolution is answered in that manual, which will be laid upon our table in a very few days. I trust the gentleman will consent that his resolution shall lie on the table. It strikes me that the passage of this resolution, under these circumstances, must necessarily increase the expense to the State, and for that reason also I trust the gentleman will consent that his resolution lie on the table. I wish to say a few words more. I do not think with the gentleman from Westchester, (MR. GREELEY) that the Democratic party acting either here, through their representatives upon this floor, or as part and parcel of the people of the State of New York, will be inclined under any and every circumstance to go against the adoption of a Constitution which shall be made by this body. I believe, if we go in the right spirit to work, and frame a Constitution to subserve the great interests of the people of the State of New York, that the Democratic party represented here will vote in favor of that Constitution, and that the Party at the polls will respond to the action of their representatives. I move, sir, that for the present, the resolution of the gentleman from New York do lie on the table.

Mr. TILDEN—Will the gentleman withdraw his motion for a moment, in order that I may make a single observation?

Mr. ALVORD—As I do not wish to stifle debate, I will withdraw it.

Mr. TILDEN—Mr. President: The observations which my friend, the delegate from Westchester, (Mr. Greeley), has deemed it proper to make to this Convention, seem to require that, in behalf of those like myself—(and I speak for myself, and for a few others whose opinions on this subject I know) we should be allowed to say, as we do say, that we have met here upon this occasion under the sworn duty which we have assumed, to discharge that duty in good faith, and to the best of our ability. And, sir, I do not hesitate to say that it would not be good faith for men to come here determined before hand to vote against whatever the wisdom and deliberation of this Convention might finally determine to adopt. If I were disposed, as I am not at this period of the discussion, to retort, I might be inclined to say, that if the gentleman knows there is to be put into this Constitution what we ought not to or cannot support, then we would be warranted in coming to the conclusion he has stated. Not otherwise, sir. Whether it be wise or otherwise that this body should assemble—whether it is the most opportune and auspicious occasion in which the people of the State of New York should assemble in their original sovereignty to form a new fundamental law—upon that question undoubtedly there have been very grave doubts entertained. Very wide differences of opinion, if this be the most fitting and auspicious occasion to undertake this work, have been entertained. But it is enough that it is undertaken, and it is our duty here, acting in a spirit of the largest good faith, to

endeavor to make that work as perfect as it is possible for this body to make it. If, then, it fails to be such as we can give our support to, we shall undoubtedly express our opposition to the conclusions and the labors of this Convention, in a way that is not only our right, but our duty to do. Mr. President, I see around me a large number of men, not of my own political associations, in whose integrity, in whose honor, and in whose sense of public duty, I have the greatest confidence. I do not think that we ought, any of us to act—I do not think that those gentlemen ought to act—I do not think that those even who have been most despairing of good results in reference to the proceedings of this Convention ought to act upon any presumption beforehand that this Convention is to be a failure. If we think so let us adjourn tomorrow and go home. If, on the other hand, we are to make a fair trial—if we are to make an experiment in good faith, to improve the organic law of the State—let us not begin with any mutual misconception of each others motives. Let us not assume that the majority of this Convention have determined before hand to put anything into it that will secure our opposition, and let them not suppose that we are determined to make this opposition whatever they may put in. Sir, I think it extremely probable that there are many questions here upon which party lines as they now exist in this State will not be distinctly drawn. I think there will be many questions upon which gentlemen will act with independence, with candor, and with wisdom, and I simply make these observations for the purpose that there should be no misunderstanding and no misconception of the position which I, for one, occupy, and I know of many others who think with me on these questions.

The PRESIDENT—The resolution giving rise to debate will lie on the table under the rules.

Mr. E. A. BROWN—I rise to say that the gentleman who has charge of the manual states that one volume is printed, and is ready to be laid on the table of members.

The PRESIDENT.—The Chair would inform the gentleman from Lewis, (Mr. E. A. Brown), that there is no question before the Convention.

Mr. GOULD offered the following resolution:

*Resolved*, That a Committee be appointed to prepare in bill-form a copy of the present State Constitution, to be printed with open spaces for interlineation and memoranda and with such comparative notes and references as may be found practicable.

Mr. GOULD—My object in introducing the resolution I will now state. On going to the office of the Secretary of State I saw and examined the manual as prepared. I found Dr. Hough, the Secretary of the commission appointed under the law, had for his own private information prepared a document such as is called for by the resolution. On looking it over, it seemed to me most admirably calculated to facilitate the business of this Convention. It has under the sections of our present Constitution all the corresponding provisions of all other Constitutions of the States. Such examinations and comparisons will frequently have to be made, and it struck me that it would facilitate the labors of the Convention to have such a document. I am

informed that under the law this cannot be printed in the Manual unless it have the special sanction by resolution of this body, and I have, therefore, offered the resolution with that view.

The question was taken on Mr. Gould's resolution and it was declared adopted.

Mr. FOLGER—I wish to offer an amendment to the resolution of the gentleman from Westchester, (Mr. Greeley) which may lie over with the original, under the rule.

Mr. GREELEY—I wish it understood that I will accept all amendments.

The CLERK read the amendment offered by Mr. Folger, as follows:

Add thereto the following: "And a table which will show with how much each so-called lateral canal should be credited for its contributions to the revenues of this State, which, in the yearly official tables and reports, are credited to the Erie canal."

Mr. HATCH offered the following amendment to the resolution offered by Mr. Greeley:

Add "and also the amount of outstanding canal debt and when due, and when the same would be paid, taking as a basis of calculation the future average of our toll receipts for the last seven years."

The amendment laid over under the rule.

Mr. LARREMORE offered the following resolution:

*Resolved*, That the privileges of the floor of this Convention be and the same are hereby extended to the members of the former State Conventions who may be temporarily in this city.

Which was adopted.

On motion of Mr. WEED, the Convention took a recess till four o'clock P. M.

#### AFTERNOON SESSION.

The Convention reassembled at four o'clock.

The CLERK read the resolution under which the Convention had taken a recess.

Mr. SHERMAN offered the following resolution:

*Resolved*, That the drawing for seats, assigned as the business of the present session, be adopted according to the mode usually practiced in the Assembly, viz.:

1. Folded ballots to be prepared, each containing the name of a member.
2. These ballots to be examined and compared with the official list by a Committee of two, to be appointed for that purpose by the President.
3. The ballots to be placed in a box, and thoroughly shaken in presence of the Convention.
4. The members then to retire outside the bar.
5. A person other than a member or officer to be designated by the President to draw the ballots.
6. Each ballot as drawn to be handed to the President, and to be opened by him; then handed to the Clerk who shall announce the name drawn.
7. The person whose name shall be drawn, to select his seat and to occupy it till the completion of the drawing, under penalty of forfeiture if vacated.
8. The drawing to continue in this manner till concluded.

Mr. CONGER—It may not be expedient at this time to suggest any modification of the resolution,



which has doubtless been prepared in accordance with the wishes of the majority of this Convention, but it seems to me, and I desire to draw the attention of the gentlemen present to the fact, that we are not constituted as the Assembly, that we are not here to-day representing Assembly districts, but in obedience to the high behests of the Legislature of the State we are here as the representatives of the various Senatorial districts. It seems to me, therefore, proper, that some regard should be had, in the drawing of seats, to the manner in which this body is constituted, and that instead of drawing the seats as individual rights, we should draw seats to represent the Senatorial districts here represented. And this would add vastly to the convenience of the gentlemen representing one district. Had the old rule prevailed in the construction of this body, then every gentleman here present would be representing an Assembly district, and as such would have a paramount right to his seat as an individual representative of an individual district. But if I understand the meaning and purpose of the law by which we come together here, we represent, four, five, six or eight of us, as the case may be, one single Senatorial district. I would, therefore, respectfully suggest, and move as an amendment, in order to try the temper and sense of the Convention on this subject, in reference to the manner in which we are constituted as a body, that the seats be drawn so as to represent Senatorial Districts, and that the gentlemen who are entitled to, and do represent, Senatorial Districts, take the number of seats which belong to them as of right. I don't know how this proposition may strike other gentlemen, but for myself I would be pleased to be associated with all the gentlemen representing my Senatorial District. I have no predilections as to their political opinions whatever. The gentleman who this morning spoke for Westchester, (Mr. Greeley) is my associate in the representation of that District—the Ninth Senatorial District. The Delegates at large have been so distributed, that in New York many gentlemen represent the Senatorial Districts there. In the case of the Ninth Senatorial District, besides those selected by the people—four in number—there are gentlemen here as Delegates at Large, representing that district, and I should like for purposes of conference and for the convenience of the discussion of local interests, to have these gentlemen brought together in such a way that it would be more convenient for them to consult together. With entire respect to the gentleman who offers this resolution, and I trust, with due delicacy, as representing those who have been described here this morning, as in the minority, I still feel with great confidence that this Convention will remember its constitution and the manner in which it is constituted, and that those gentlemen do not stand here in their individual rights as representing mere localities, but unitedly, Senatorial Districts. I submit my proposition in the shape of an amendment.

The CLERK read the amendment as follows:

That the drawing of seats be for each Senatorial District represented in this Convention, and that the members of such district select their seats according to their discretion.

Mr. SHERMAN—The plan I have offered seems to me as fair as any that could be adopted, and it is one that is equally practicable, while the one which the gentleman from Rockland [Mr. Conger] has suggested seems to me not to be practicable. And the one I have offered is as fair to the minority as it is to the majority. If the gentleman, however, can offer one which is at the same time to be fair and practicable, I shall be very glad to hear and to adopt it in the place of my own.

Mr. GREELEY—It seems to me the proposition would be just as fair to allow the Senatorial districts to draw in the same manner, and then allow the gentlemen here present each of them to take their seats upon that drawing. It would shorten the balloting very much, as we should have but thirty-two ballots to be drawn. I think the proposition of the gentleman from Rockland [Mr. Conger] is certainly fair and practicable, and we should get through much sooner, and in that way we could allow gentlemen to take their seats together or separate as they may choose.

Mr. WEED—May I ask the gentleman from Westchester (Mr. Greeley) what district he represents?

Mr. GREELEY—I say that I would take my chance with the gentleman from the Ninth Senatorial district.

Mr. WEED—There are no representatives from the Senatorial districts, except the four especially elected. Because I happen to live in a Senatorial district, or because a gentleman happens to live in a Senatorial district, and is elected upon the ticket at large, he is not the Delegate of that Senatorial district, nor has the special charge of that Senatorial district upon his hands. It seems to me that the amendment of the gentleman from Rockland [Mr. Conger] is perfectly impracticable. Under the plan suggested in the original resolution, each member here when his name is drawn will be authorized to choose his seat in that part of the house that suits him best. The room is not so large but that, during the deliberations, the members from any Senatorial District can consult with each other.

Mr. M. L. TOWNSEND—I hope the original resolution may prevail. I know it would be agreeable in a social point of view, that gentlemen who come from the same locality and who are acquaintances, should be seated together, but I doubt whether the influence of such coteries and associations would be beneficial upon the deliberations of this body. We have seen this morning that in the minds of some, there is a disposition to make party decisions, while other minds seem to be measurably free from it. I believe we shall be more likely to keep ourselves aloof from such considerations if we commingle with each other freely without reference to our previous politics or previous locations. I think it is the case in every Senatorial district that the gentlemen from that Senatorial district are all of the same politics—I mean those elected from the Senatorial districts—with one exception throughout the entire State. We find there is one gentleman from the city of New York who seems to have been elected, of different politics than that of the other three members, from that district. In other cases you will put the four men agree-



ing in politics side by side. And these men have none of the results produced upon their minds which would be produced if men of different politics were thrown side by side, hap-hazard. I do not believe in coming into this Convention with a feeling that it is undesirable that we mingle together, men who have been Democrats, or who have been Republicans, to exchange ideas with each other. I trust that if there is any mode by which this clanishness can be prevented in this Convention, that mode may be adopted. I am as pleasantly situated in my associations as any man can be or would like to be, certainly as much so as any man coming from any other part of the State, but I don't believe it is best for me or my friends that we should isolate ourselves in this Convention, and sit together as a clan, instead of being separate.

Mr. TILDEN—There seems to be some misapprehension on the part of the delegates in reference to the original proposition of the gentleman from Oneida [Mr. Sherman]; it is not that seats be assigned according to drawing, but by the choice of the individual drawn. I confess it seems to me that the original proposition is the best. It will give me great pleasure to have a seat among the delegates that come from my own locality, but I think it is very well that we should be all shaken up together, and "commingled," as my friend says. I think we are not any of us here to represent geographical districts in any peculiar and exclusive sense. I don't think there is anything in the circumstance that we are some of us elected from certain Senatorial districts instead of Assembly districts to determine us to depart from the method adopted in the Convention of 1846, and in the Assembly since. On the whole, I cannot say I have any special preference for, or objection to, the proposition of the gentleman from Rockland [Mr. Conger], but I think the other system is preferable, besides having the force of usage and prescription in its favor. But this proposition is not complete, as it does not include the cases of Delegates at large, and will not be unless it be amended so that Delegates at Large can be assumed to be representatives of the particular Senatorial districts in which they happen to reside. With that amendment it would be adequate to the purpose. There would then, perhaps, be some confusion in regard to four or five delegates from the Senatorial districts in assigning them their seats. The other is the simpler and most direct mode or the one most usual, and in my judgment on the whole matter, better adapted to the purpose.

The question was taken on the amendment of Mr. Conger and was declared to be lost.

The question then recurred on the original resolution of Mr. Sherman, and it was declared to be carried.

Mr. WEED moved that delegates residing in a Senatorial district be authorized to draw seats for any delegate from that district who might be absent at the drawing, which was carried.

The Chair appointed, under the resolution of Mr. Sherman, Mr. Frank and Mr. Weed to compare the ballots prepared with the list of delegates.

Mr. S. W. FULLERTON, a delegate to the Convention, appeared and took the Constitutional oath.

Mr. FRANK announced that himself and colleague had compared the ballots with the list of delegates, and had found the same to be correct.

Delegates then withdrew without the bar of the Convention, when the drawing of seats was proceeded with to its completion.

On motion of Mr. AXTELL, the Convention adjourned.

WEDNESDAY, June 5, 1867.

The Convention met pursuant to adjournment. Prayer was offered by Rev. T. F. MORROW.

The journal of the previous day was read and approved.

Mr. A. D. RUSSELL, a delegate, appeared in the Convention and took the constitutional oath of office, which was administered by the President.

Mr. FRANCIS offered the following resolution:

*Resolved*, That the Secretary be directed to cause the removal of the temporary partitions on the south side of the Assembly Chamber, connecting with the room of the sergeant-at-arms and cloak room, in order to furnish additional light and air to that portion of the chamber.

Mr. C. C. DWIGHT offered the following amendment:

And to extend the railing constituting the bar of the house, to the pillar next the chimney.

Which was adopted.

The question then recurred on the resolution of Mr. Francis, as amended, and it was declared to be adopted.

Mr. FRANCIS offered the following resolution:

*Resolved*, That a committee of three be appointed by the President to inquire upon what terms full, verbatim, reports of the debates and proceedings of this Convention may be published in two or more daily papers of this city.

Which was adopted.

Mr. TAPPAN offered the following resolution:

*Resolved*, That the Secretary of the Convention be and he is hereby directed to supply each member of the Convention with a copy of the proceedings of the Constitutional Convention of 1846, and to apply to the Comptroller for the payment of the expense thereof.

Mr. CORBITT—I would like to ascertain, Mr. President, if it is possible, how many members of the Convention have already copies of the proceedings of the Convention of 1846. I am informed by my colleagues that most of us have copies.

Mr. FOLGER moved to lay the resolution on the table.

Which was carried.

Mr. POND offered the following resolution:

*Resolved*, That a Committee of five be appointed by the chair to inquire and report upon the expediency of adjourning this Convention to Saratoga.

Mr. BICKFORD moved to lay the resolution on the table.

Mr. POND—Mr. President—

The PRESIDENT—The resolution giving rise to debate, it will lie over under the rule.

MR. ANDREWS—MR. PRESIDENT: It devolves upon me to make formal announcement to this

Convention, of the decease, last evening, of one of the members of this body, by a sudden and wholly unexpected event. And thus it is, that death already, within our limited circle, has asserted its dominion over the race; and, sir, I am so oppressed with the suddenness and appalling character of the event to which I have referred, that I am utterly unable properly to express to this Convention the feelings which it suggests. I make this announcement, sir, as one of the colleagues of the deceased, with whom I have always been on intimate personal, and intimate professional relations, and whom I accompanied to this city, well knowing that he deeply felt the responsibility resting upon him, in common with the other members of this Convention in respect to the important work which has been confided to it. In the very vigor of his life, and in the prime of his manhood, this delegate has been stricken down in death, and his presence no longer will be seen or felt among us. He was a native of the county of Onondaga, which sent him accredited to this Convention. He had lived there during his whole life up to this time, and has ever been trusted and honored by the citizens of his native county, not only in respect to the local positions which he has held, but in respect to wider fields of public trust, to which he has been assigned. He was first elected as Surrogate of the county of Onondaga, and with diligence and fidelity discharged the duties of that position. He was afterwards, two years ago, assigned to a wider sphere of public action, having been sent to represent his own Assembly District in the Legislature of the State. He came here without experience, but a knowledge of his professional character gave him a position upon one of the most important Committees of the House,—that of the Judiciary,—and by circumstances which prevented the personal attention during a great share of the session of the chief of that Committee, upon him was devolved during the first term of his legislative experience to a considerable extent the molding and shaping of the legislation of the State. He was returned again the last winter as a representative of his district to the Assembly of this State, and the rare intelligence and the industry which he had previously brought to the positions which had been assigned him the first year, properly led to his designation as the chairman of the Committee upon the Judiciary. And, sir, there are many gentlemen here present who can testify to his wisdom, to his industry, and to his intelligence as the chief and leading member of that committee during the last year. I do not propose, sir, to enter at length into any statements in reference to the character of the deceased. I can say that, while he was not distinguished for brilliant qualities, he had those substantial traits of character which ever gave him influence and position in the community where he was known, and those will be the sincerest mourners at his grave who have known him longest and best, and who have been enabled by their knowledge thus derived of him, to place upon his character that just estimate to which it was entitled. But that career which had opened so auspiciously for him, has been suddenly terminated, and, it seems

to me that this event may not be without its proper lesson upon those of this body who remain. Our work is left, although he shall take no share in its responsibilities, and we may perhaps be led to greater soberness and earnestness, in the performance of the important work which has been assigned to this body. And moreover we may be all led to cherish still more sacredly than we ever have before the principle that our liberties, our lives, and our property are due and owing to the constant recognition, under all circumstances, of the supremacy of the law. I forbear to continue these remarks. I have said what I have been able to say in justice to a friend, in justice to a public spirited and high-minded citizen, and I leave it to other members of this Convention to indicate such course of action as shall be deemed appropriate by it under these circumstances.

Mr. ALVORD—I have, sir, for a long time been in the habit of occasionally coming from my native county as its representative, upon the floor of the Legislature of this State, at this city, but never, sir, through the whole history of my life, have I been called upon until now, to speak upon an occasion like this, and I deeply feel the great weight that rests upon me; because, more than a colleague, more than with me, a native of my native county, I have lost an honored and a dear personal friend. In a moment, in the twinkling of an eye, without any consciousness of the effort that was made to destroy his life, he sank at once, without an exclamation, into the arms of death. Sir, we are about to bear his remains from here back to the county that gave him birth; we are about to bear them to the arms of that family, who have surrounded him in the past, and who have looked up to him with confidence and with hope and with love; and it is necessary also for me to say to this Convention that we bear him not only to those who are attached to him by blood, but we bear him to a family of mourners of almost the entire population of the city of his residence and of the county of his birth. Deservedly high, sir, he stood in the estimation of the people of that county; deservedly high he stood in the estimation of all who ever approached him, and I trust in the God that rules over us, that the warning which has been given by his sudden departure from amongst us, will teach us that “in the midst of life we are in death,” and will so impress upon our minds the necessity of doing what shall remain for us to do in this world, that we shall do it diligently and well. Mr. Hiscock, sir, was born in the town of Pompey, in the county of Onondaga, in the year 1824. The son of a farmer, commencing in early life, under the necessities that crowded around the family, as a laborer in the field, but soon emerging from that position, anxious and desirous to permit his intellect to grow and expand, he stood outside of the family circle, and with his own hands, and with the work of his own brain, brought himself to the position which he occupied but yesterday. Sir, upon him had leaned those brothers of his, younger than him in years, and he had brought them up alongside with him, also to the position of eminence and honor in our midst. He has been

eminently sir, from the beginning, to the end of his career, a self made man, working out with his own intellect and with his own arm, all positions which have been given him. I cannot add upon this occasion anything more than what has been said by my colleague in reference to Mr. Hiscock, and I leave with him also, to the body of this Convention, such course as they shall deem proper to take upon this occasion.

Mr. WEED — To receive the tidings of the death of a friend, stricken down under any circumstances, is sad and appalling; but to have that friend stricken down, as it were, by your side, in health, in the full vigor of manhood, is terrible. Last evening the deceased was for a few moments before his death, in intimate, friendly conversation with myself, in the full vigor of his manhood, and in full health and strength, when in a moment the ball of the assassin laid him low. As has been well said by his associates, and those who have known him intimately from his boyhood, the effect upon a friend is such that words will not come at his bidding; but, as a friend, and, as one who, though living in a distant part of the State, has been for the last two years intimately connected with him, I deem it my duty at this time to bear my tribute—my poor tribute—to his memory. He, for the two past years, has been a member of that body of the Legislature of this State that has held its sessions in this Hall, and I too have had the honor of a seat here during those two years. Differing widely upon many questions that came before that body, still, from the first until the last, our relations have been intimate and of the most friendly and kindly character, and I here, at this time, bear tribute to his ability, his honorable deportment, his noble heart and his kind and gentlemanly ways. I deeply regret that this sudden act should have taken from this body one who would have been a valuable member in it. As the substantial head for the past two years of the law Committee of the Assembly of the State of New York, his duties there were arduous and responsible, but by his untiring industry and his ability he performed them satisfactorily to that body, and I believe satisfactorily to himself and his friends. As I have already said, not only my legislative relations with the deceased have been of the most friendly character, but my personal relations have also been equally friendly, and I fully concur in the sympathy expressed by those who have been fortunate enough to have lived in the same community with him for all, or nearly all, his life. I, Mr. President, one with the passions and frailties that mankind is heir to, do not at this time feel to judge harshly of him, who, in violation of the laws of God and man, has seen fit to strike from existence our friend. The laws of man say, that man shall not be the judge of his own real or supposed wrongs; the laws of God say, "Vengeance is mine." He who last night shot down our friend violated both. We do not and can not ever know the thoughts and secrets of the heart of our friend; his life is closed, his heart is still, his manly form will soon be placed beneath the sod forever. We do not know the passion, the frenzy of him who struck the fatal blow, but we do know, and I feel it my

duty here to say, that I believe that I know, that none but a coward heart would have planned, and none but a murderous hand would have inflicted, upon an unwarned victim, the blow such as was struck upon this our friend. I, with the colleagues of him who has departed, leave it for this body to take such action upon this matter, as they may see fit.

Mr. FOLGER offered the following resolutions:

*Resolved*, That this Convention assembling this day in sorrow for the sudden and violent death of one of its members, the Hon. L. Harris Hiscock, will, as a mark of respect for the dead, when it adjourn, adjourn until Tuesday, the 11th inst., at 11 o'clock A. M.

*Resolved*, That a committee of eight be appointed by the Chair, to accompany his remains to the place of his late residence, and to represent this body at the place of sepulchre.

*Resolved*, That the officers and members of this body do wear the usual badge of mourning for thirty days, and that the flag upon the capitol be held at half-mast until after the burial.

Mr. GREELEY—The long adjournment which is provided for in the resolution is the only part to which I object. The rest I wish to have passed unanimously. I simply desire to have that part proposing a long adjournment stricken out, which will leave the remainder to be passed by a unanimous vote. I trust we will have our committees appointed before we make such adjournment.

The PRESIDENT — Will the gentleman from Westchester [Mr. Greeley] reduce his amendment to writing?

Mr. GREELEY—I simply ask for a division of the question—to leave out the part providing for a long adjournment, and take a vote upon the rest.

Mr. E. BROOKS — I hope, Mr. President, there will be no division upon the question. I think that the appalling tragedy which has just taken place must so impress itself on the minds of every member of this Convention that the interval of time which is suggested by the resolution that has been submitted will produce no delay in the proper deliberations of this body, and will result, individually, to the good of each of its members. I think there will be no unnecessary delay, because the President of this body is already charged with the appointment of the respective Committees of this Convention, and during the interval of time between now and Tuesday next, those committees can be as well prepared, or will be properly prepared and considered by the President of this body. Sir, there is a great deal to be done, I know, in this convention. I hope it will be done with that deliberation, consideration, and care, which become the objects which have convened us together. I believe in a proper diligence in business. I believe in doing what we do, wisely and well. I do not think that either the necessities of our constituents, or the public interests at large, will suffer by the adoption of the resolution as it has been submitted by the gentleman from Ontario. [Mr. Folger.]

Mr. GREELEY.—The fact is exactly opposite from what the gentleman from Richmond [Mr. E.



Brooks] supposes. The President of this Convention is not authorized to appoint committees; we do not know what committees we are to have; we have simply provided for a general committee to divide the labors of the Convention. That Committee is to be appointed to lay out the work for the Convention before the President will be in a position to consider what Committees are to be appointed. I therefore say that we are not ready to make this long adjournment now. If we had the labors of the Convention divided and the number and character of the Committees settled now, so that the President could take upon himself to appoint the Committees, I should feel that the proposed adjournment would not be a public calamity, but to adjourn at this stage of the proceedings, I think, would be. I have therefore asked for a division of the question, and that the question be taken first upon the resolution of the gentleman from Ontario [Mr. Folger], except this portion which provides for an adjournment of nearly a week. I think I have a right to the division.

The PRESIDENT—The chair recognises the right of the gentleman from Westchester [Mr. Greeley] to call for a division.

Mr. M. I. TOWNSEND offered the following amendment to the resolutions:

"Insert after the word 'Hiscock' the words, 'stricken down by the hands of an assassin.'"

Mr. RATHBUN — Mr. President, whatever our individual opinion may be upon this subject, is one thing. What we, as individuals, think upon this subject, we have the right to think, but I do believe, sir, that it is politic or proper for this Convention to decide upon a question which belongs to the courts of law, and not to the Convention. We forget that when this Convention, by the amendment, attempts to determine whether this was an assassination, that to do so would be transcending the duties which belong to it. We should recollect that this very act is an admonition to us to leave the law to determine the question.

Mr. WEED—I regret exceedingly that any amendment has been offered to the resolutions. I regret that any supposed necessities for hurrying business should have caused this discussion at this time. I trust the gentleman from Rensselaer [Mr. M. I. Townsend] will withdraw his amendment, so as to relieve the Convention upon that matter. As the gentleman from Westchester [Mr. Greeley] has spoken with reference to the business of the Convention as a reason why an earlier day should be fixed for the reassembling of the Convention after the proposed adjournment, I trust the Convention will pardon me for making a brief answer to the statement. As I understand the doings of this Convention, the Committee to be appointed by the President, (which was voted for yesterday) will report to this Convention what Committees it shall have. That Committee has not yet been appointed for want of time, and it is a very important part of the duty of the Convention. If this adjournment is made till Tuesday, it will be none too long for that Committee to digest and determine its plans, and when they report to the Convention, it will save the time of delegates by the care which the

Committee have given, in determining upon the plans they are to report. I, therefore, trust the division will be voted down and the resolutions as they were offered by the gentleman from Ontario, will be passed unanimously.

Mr. M. I. TOWNSEND—Mr. President, I offered the amendment presented by myself, partly in justice to my own feelings and partly from a remark which fell from one of the gentlemen, the precise tenor of which I am unable now to remember; but with a view of having it understood that this Convention was willing to call the assassination of one of its members by the real name that it ought to bear. I am one of those that believe in the enforcement of the laws, and for myself, no mawkish sensibility will prevent me, or ever has prevented me, from desiring to see those who commit the largest crimes meet with the punishment which is their just due. Since this horrid tragedy has come to my ears this morning, I have fancied to myself the gradual fading out of the horror of crime in the public mind, and that perhaps this man, if convicted, may, through the philosophers and philanthropists of the world, be placed in a situation where, instead of being considered an assassin, be esteemed a hero. But gentlemen whose wishes and feelings I am not at liberty to disregard, have solicited me to withdraw my amendment, and in deference to the feelings of others, and in no deference to my own judgment as to what this Convention owes to itself, I withdraw the amendment.

Mr. FOLGER—If the committee will grant permission to withdraw my resolutions I will do so, and so amend the first that it shall provide that the Convention do now adjourn, which will obviate any objection to their immediate adoption. My reason for providing for an adjournment to a day so late, was this: I had supposed that the President of the Convention would be ready this morning to announce the Committee of Sixteen, and the Committee on Rules; I had supposed that those Committees would sit during the interval, and that they would apprise the President to what conclusion they had come, so that he would know about how many committees the Convention would probably have on the coming in of their report, and that he, in the interval of our session, would be able to arrange in his mind the places of the several members of this body upon those committees. I knew that it had always been the custom of Legislative bodies to have an adjournment for a day or more, and sometimes for three days, to allow an opportunity for the presiding officer to make up the committees, and I had supposed that my resolution would chime in with that custom, and could do no more in its adoption than what would be done otherwise if the occasion for this resolution had not arisen. But, I was under a misapprehension, as I learn that the President is not ready to announce those Committees. I, therefore, vary the phraseology, either by my own hand or by that of the Secretary, in the particulars I have stated.

The Secretary read the resolution as modified in words as follows:

*Resolved*, That this Convention assembling this day in sorrow for the sudden and violent death of

one of its members, the Hon. L. Harris Hiscock, as a mark of respect for the dead do now adjourn.

*Resolved*, That a committee of eight be appointed by the Chair to accompany his remains to the place of his last residence so as to represent this body at the sepulture thereof.

*Resolved*, That the officers and members of this body do wear the usual badge of mourning for thirty days, and that the flag upon the Capitol be held at half-mast until after the burial.

The question was then taken on the resolutions as modified, and they were declared to be adopted.

The PRESIDENT announced the following as the committee of eight provided for by the resolution:

Messrs. Folger, Opdyke, Tucker, Tappen, Merrill, Veeder, Hatch and Bell.

Mr. BALLARD—Asked leave of absence for Mr. GOODRICH, of Tompkins, for ten days, which was granted.

In pursuance of the resolution adopted, the Convention adjourned.

THURSDAY, June 6, 1867.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. A. A. FARR.

The journal of yesterday was read and approved.

The PRESIDENT announced the following appointments:

*Librarian*—Ferdinand De Wigne.

*Doorkeepers*—James Armstrong, James Tanner, C. V. Schram, David L. Shields, Herman Ruleson, Eugene L. Demers, John Pewit, William McManus.

*Messengers*—William Gordon, Eugene D. Wood, John Phillips, John McDonald, Matthew Patterson, George B. Sheldon, Harvey Bell, Charles H. Walters, William Richardson, Frank Agan, Nathaniel Hallenbeck, Charles L. Keyes, Thomas Fausey, Christopher Van Valkenburgh, Edgar Cayless.

The SECRETARY announced the following appointments:

Cornelius S. Underwood, Journal Secretary; Henry A. Gledde, Assistant Secretary; Edward W. Simmons, Financial Secretary.

The PRESIDENT announced the appointment of the following Committees:

Under the resolution of Mr. Sherman for a committee to report a code of rules:

Mr. Sherman, Mr. M. I. Townsend, Mr. Archer, Mr. Weed and Mr. E. Brooks.

Under the resolution of Mr. Gould for a Committee to prepare in bill form, a copy of the present State Constitution, &c.:

Mr. Gould, Mr. Beckwith, Mr. Bell, Mr. Tucker, and Mr. Schoonmaker.

Under the resolution of Mr. Francis for a committee to inquire upon what terms full verbatim reports of the debates of the Convention may be published in two or more daily papers of this city:

Mr. Francis, Mr. Duganne and Mr. Develin.

Under the resolution of Mr. Harris for a committee of two members from each judicial district to consider and report the best practicable mode of proceeding to revise the Constitution.

Mr. Harris, Mr. Seymour, Mr. Hutchins, Mr. Tilden, Mr. Van Cott, Mr. Murphy, Mr. W. O. Brown, Mr. Paige, Mr. Ballard, Mr. Comstock, Mr. Beadle, Mr. Magee, Mr. Lapham, Mr. Chesebro, Mr. Bowen, Mr. Church.

Mr. CURTIS—I have a communication from the President of the Young Men's Association of this city, which I am requested to lay before the Convention.

The communication was read in words as follows:

ROOMS YOUNG MEN'S ASSOCIATION,  
ALBANY, June 6, 1867.

HON. WM. A. WHEELER, *President of the Constitutional Convention*.

SIR—The Executive Committee of the Young Men's Association, of Albany, has instructed me to extend the freedom of their rooms to the members of the Constitutional Convention during their residence in the city. The principal newspapers of the country will always be found on the files. Such books of reference as may be required, may be obtained upon application to the Librarian.

Hoping the gentlemen of the Convention will avail themselves of such courtesies as we may be able to extend, I remain, with sentiments of much respect,  
Your obedient servant,

EDWARD DE FOREST, *President*.

Mr. CURTIS moved that the invitation be accepted.

Which was carried.

Mr. FRANCIS offered the following resolution:

*Resolved*, That when this Convention adjourns it adjourn to meet on Tuesday next, June 11th inst., at 11 o'clock A. M.

Mr. GREELEY—I pray that this Convention may not adjourn until we have received the report from the very important Committee which has just been announced from the chair. I think I am assured by the Chairman of that Committee that it need not be a very long work, although a very important one. Now, Mr. President, if this Convention should adjourn over to-day until to-morrow morning, that Committee might then be able to report. We may wish to revise their action. I have great confidence in that Committee, but still it is quite probable that this Convention may choose to exert a supervisory discretion or power over the action of that most important Committee. The moment we shall have received and acted upon that report I am perfectly willing to adjourn for as many days as the Chair shall deem necessary to enable him to make up the committees of the Convention; but until we have provided for those committees,—until we have clothed the Chair with the power to make certain committees, under the direction, not of a committee, but of this Convention,—it is entirely improper for this Convention to adjourn. I move, therefore, that this proposition do for the present lie upon the table.

The question being taken on the motion of Mr. Greeley to lay the resolution of Mr. Francis on the table, it was declared carried, by the following vote:

*Ayes*.—Messrs. A. F. Allen, Axtell, Baxter, Barker, Beadle, Bickford, E. P. Brooks, E. A. Brown, W. O. Brown, Conger, Duganne, O. C. Dwight, Eddy, Ely, Endress, Field, Fowler, Frank, Fuller, Gould, Graves,

Mr. W. C. BROWN offered the following resolution:

*Resolved*, That the privileges of the House be extended to the judges of the Court of Appeals. Which was adopted.

Mr. S. TOWNSEND offered the following resolution:

*Resolved*, That the President of this Convention appoint a committee of one from each judicial district for the purpose of examining and reporting to this Convention whether, in their opinion, under the provisions of the 2d section of the 13th article of the existing Constitution, this body is constitutionally called.

Mr. GREELEY moved that the resolution do lie upon the table.

Which was carried.

Mr. BICKFORD offered the following resolution:

*Resolved*, That the Secretary of State be requested to furnish a copy in pamphlet form of the law of the Legislature under which the delegates to this Convention were elected, to such members as shall desire the same; *provided* that a sufficient number of copies of the edition already printed are already on hand.

The question was then put on the resolution of Mr. Bickford, and it was declared adopted.

Mr. E. P. BROOKS offered the following resolution:

*Resolved*, That the State Engineer and Surveyor be requested to make an estimate of the cost and expenses of enlarging the locks on the Chemung canal, and on the Chemung Canal feeder to the size of the locks on the Erie canal, and to submit such estimate to this Convention at as early a day as practicable.

Mr. BROOKS—I merely wish to explain to the Convention, with regard to this resolution, that the information called for can be obtained without any expense to the State at all, as it is already in the department, and can be furnished without any extra expense.

Mr. HATCH—Will the gentleman add to his resolution this amendment; and also furnish a table of the cost of construction, maintenance and repair of said canal?

The amendment was accepted and the question being taken on the resolution as amended, it was declared to be adopted.

Mr. LAPHAM offered the following resolution:

*Resolved*, That this Convention take up the existing Constitution of the State, in Committee of the Whole, and consider the same by sections, with the view of determining the sense of the

Convention, as to which of its provisions shall remain unaltered, and which need revision or amendment; and that those sections only which give rise to debate shall be regarded as subjects of reference to committees.

Mr. LOEW moved that the resolution lie upon the table until the Committee of Sixteen have made their report to the Convention.

Which was carried.

Mr. SPENCER offered the following resolution:

*Resolved*, That a committee to consist of six members, elected by Senatorial Districts, and three members at large, to be appointed by the President, prepare and report to the Convention such proposed revision and amendment of the present Constitution, or any part thereof, as the same may seem to require, and that any revision or amendment proposed by any member prior to the final report of the committee be referred to such committee to report from time to time as they may deem expedient.

Mr. SPENCER—I would suggest the reference of that resolution to the committee of sixteen.

Which reference was ordered.

Mr. SHERMAN offered the following resolution:

*Resolved*, That the select Committee on Rules be authorized to have printed such report as they may agree to, so that the same may be laid upon the tables of members at to-morrow's session, if practicable.

The question was then put on the resolution and it was declared adopted.

Mr. KETCHAM offered the following resolution:

*Resolved*, That when this Convention adjourn this day, it adjourn to meet on Monday, June 10, at 11 o'clock.

Mr. GREELEY moved that the resolution lie upon the table.

Which was carried.

Mr. SHERMAN offered the following resolution:

*Resolved*, That the whole subject of a revision of the Constitution be referred to a select committee of sixteen, viz.: two from each Judicial District of the State, who shall report for the consideration of the Convention, such amendments or such proposed new Constitution as they shall be able to agree upon; the report, when made, to be referred to a Committee of the whole Convention for consideration in detail.

Mr. SHERMAN moved that the resolution be referred to the select committee of sixteen.

Which was carried.

Mr. M. L. TOWNSEND—Mr. President: My name was announced as a member of the committee to present rules for the government of the deliberations of the Convention, and I see that it is desirable that that committee should meet almost immediately. I have an engagement to-day at four o'clock, that involves the convenience of a great many other persons in such a way as to render it very difficult for me to attend to the immediate duties of that committee, and I therefore ask to be excused from serving on that committee and that some other gentleman be appointed in my place.

No objection being made, Mr. Townsend was excused.

Mr. GREELEY—I desire now to call up my resolution asking for certain information for the benefit of this Convention with regard to our canals; and I desire to say, that if any part of that information is contained in any report about to be made, it will of course cost nothing. I wish to know the facts called for in that resolution, and I cannot act intelligently with regard to canals, until I can see clearly from a statement before me, what each of our canals has cost, and what it is costing to-day. That is the purpose of my resolution. What has each canal cost the people of this State, and how much is it costing for its continuance to-day, and what is it paying? On the other hand I gave notice that I would accept all amendments looking to the same great end,—that is, to make us acquainted with the facts concerning these canals. I ask the Convention to take up and pass that resolution, with all the amendments which have been or may be proposed, looking to the same purpose; and if there be any part of the information I wish, which is already afforded, it will cost but a trifle to transfer it from the documents in which it is contained.

Mr. E. BROOKS—I submit to the mover of this resolution [Mr. Greeley] that it should be submitted to the Auditor of the Canal Department to furnish the information called for, instead of the State Comptroller. It is very doubtful whether the information can be furnished from his office, because it is no part of his official duty. I understand, Mr. President, from the Auditor of the Canal Department, that the information called for in the resolution of the gentleman from Westchester [Mr. Greeley] is prepared and will be laid upon the table within a few days' time. I therefore propose, as a proviso, at the end of the several suggestions to the resolutions submitted by the gentleman, "and provided such information is not already prepared by the Canal department for the Convention." And, if the gentleman will accept this suggestion to obtain the information from the Auditor of the Canal Department, instead of the State Comptroller, and make it a part of the original resolution, it will not be necessary to offer the amendment suggested.

Mr. GREELEY—The Comptroller is the financial officer of the State. I would rather have information from him than from any one else, and I, for one, prefer to have it upon the responsibility of the Comptroller.

Mr. E. BROOKS—Then I move to amend the resolution by striking out the words "State Comptroller," and inserting the words: "The Auditor of the Canal Department."

Mr. HATCH—It seems to me, Mr. Chairman, that it would be better to defer any action on this resolution for the present, and see whether this manual which is talked about furnishes the requisite information. Now, if the manual does not give us the information which we require, myself and other members of this Convention, would desire to further amend these resolutions in order to secure what further information is important. We want the information not on any part of the subject, but information in respect to every canal in the State,

the cost of its construction and maintenance, and we want to know, too, whether the surplus revenues of the canals of the State would justify their improvement, or their enlargement. I am in favor of the improvement and enlargement of any canal which shows a surplus revenue. I think, sir, under these circumstances we had better defer any action on this resolution for two or three days.

The PRESIDENT—Will the gentleman name a different period?

Mr. HATCH—I move to lay it on the table until Tuesday next.

The question was then put on the motion of Mr. Hatch and it was declared carried.

Mr. E. BROOKS moved that the Convention do now adjourn.

The motion, on request of Mr. Conger, was withdrawn.

Mr. CONGER—I will move a reconsideration of the vote by which the house refused to adjourn, under the resolution, until Tuesday next.

The PRESIDENT—Did the gentleman vote with the majority?

MR. CONGER—Yes sir. I understand now it is quite impossible, as might be expected perhaps, that the Committee of Sixteen, several of whom are absent from the city, should meet in such a way as to present any order of business upon which we could act. The consequence will be, if we meet here to-morrow, the session will be quite futile in any valuable result. It is for that reason, sir, and under information which I deem to be very reliable, that the Committee are not able either to state or to report so as to give satisfactory results to the Convention. I, therefore, move a reconsideration of that vote.

Mr. GREELEY—I ask this House to consider well this proposition before adopting it. If the committee is not full, it will be more likely to agree sooner. If there are but ten members present, they would sooner give a report than if there were sixteen. If the Chairman would ask this Convention to adjourn over for two or three days, I would agree to it. Unless the Chairman of the Committee asks for time, I shall believe, as I have been well assured, that we may expect a report from that Committee to-morrow morning; therefore, I trust this resolution will not pass.

Mr. HARRIS—It is true, Mr. President, that I could make a report myself to-morrow morning; but, on conferring hastily with several members of the Committee, I am persuaded that we shall be unable to submit a report that will be satisfactory to ourselves, as early as to-morrow morning. From the experience I have had in reference to such matters, I am persuaded it will take more time, and require more deliberation, than we can devote to it between this and to-morrow morning. I think, therefore, that the Convention can hardly expect a report from this committee to-morrow morning.

Mr. FERRY—The committee with almost entire unanimity are agreed in regard to this matter. If we, by staying here, can facilitate business by which this report can be made, I, for one, would be in favor of staying. If the report cannot be made, I suppose we stay here substantially for no purpose, and I prefer an adjournment in that event. From the statement of the Chairman



of the Convention I suppose that is the position of the committee.

Mr. FRANCIS—It was after consultation with members, including the member from Albany [Mr. Harris] that I offered the resolution upon the suggestion of those whom I supposed understood the business that is necessary to be done, before it would be possible for us to make any progress here.

Mr. STRONG — The opposition I have to make to this amendment is, that it is very unequal to the different delegates. Some of them are unable to go home, and of necessity will have to remain here. As I understand it, when the Legislature passed the bill in reference to the Convention, it did not contemplate that we should adjourn for more than three days, therefore it would deprive us of our compensation if we adjourn over, beyond that time. It would be very unfair to those who cannot reach their homes within the time mentioned in this resolution. It is for that reason, if for no other, that I oppose it. But we can have considerable business to transact if we wait from day to day, independent of the business that will come from this committee. And I think, therefore, that we had better remain where we are, since it would be justice at any rate to those who can not go to their homes.

Mr. HAND—I suggest that there will be only three working days, which is all that is called for.

Mr. HALE—In answer to the suggestion of the gentleman from Suffolk [Mr. Strong], I propose to offer an amendment to the resolution of the gentleman from Rensselaer [Mr. Francis], providing that the adjournment be until Monday. That, I think, will meet the objection made by the gentleman from Suffolk, [Mr. Strong].

The PRESIDENT—The question is upon the motion of the gentleman from Rockland [Mr. Conger] to reconsider the vote by which the resolution of the gentleman from Rensselaer [Mr. Francis] was lost.

Mr. BICKFORD—I move to lay the motion to reconsider on the table.

Mr. CONGER—I should presume that that is hardly practicable.

The PRESIDENT—In the opinion of the Chair the motion is not practicable.

The question was then put on the motion to reconsider, and it was declared carried.

Mr. HALE—I move to amend by substituting Monday at 4 P. M., in place of Tuesday next, June 11th, at 11 o'clock A. M.

Mr. FRANCIS—I accept the amendment.

Mr. VERPLANCK — I move to amend the resolution by inserting after the word "adjourn," the word "to-morrow." It would be impossible for many of us to arrive here in time to attend the session on Monday.

Mr. HAND—Can we have the information from the President? There seems to be some misapprehension whether an adjournment until Tuesday will be more than three days.

Mr. VERPLANCK — I further move to amend that we shall meet on Tuesday next at 11 A. M., instead of Monday at 4 P. M.

The question was then put on the motion of Mr. Verplanck to amend and it was declared lost.

Mr. ROBERTSON—Is an amendment in order now?

The PRESIDENT—Yes, sir.

Mr. ROBERTSON—Then I move to amend by making the time to which we adjourn Monday at 6 o'clock instead of at 4 o'clock. My reason for offering the amendment is, that the train arriving at quarter past five o'clock will not reach here in time for delegates residing along the river to be in attendance upon the session. To attend at 4 P. M. would involve the necessity of a very early departure from the city or other places on the river.

The question was put on the amendment of Mr. Robertson, and it was declared adopted.

The question then recurred on the resolution of Mr. Francis, as amended, and it was declared adopted.

Mr. BICKFORD—Offered the following resolution:

*Resolved*, That the committee of sixteen appointed in pursuance of the resolution introduced on the 4th inst., by Mr. Harris, whose duty it is to consider and report the best practicable mode of proceeding to revise the Constitution, be instructed also to inquire and report as to the expediency (with a view to a short session) of confining the labors of the Convention to a few of the most urgent reforms needed in the Constitution, and of submitting each proposed amendment separately; and, if they shall be of opinion that it is expedient to undertake a general revision of the Constitution that they set forth in their report the reasons for such opinions.

Mr. VERPLANCK moved that the resolution lie on the table.

Which was carried.

On motion of Mr. LOEW the Convention adjourned.

MONDAY, JUNE 10, 1867.

The Convention met pursuant to adjournment, Prayer was offered by Rev. A. A. FARR.

The journal of the last session was read by the Secretary.

Mr. S. TOWNSEND—When I had the honor, on Thursday, of submitting a resolution to the Convention, the Chair omitted to state what I intended it should hear, that the resolution, being one which would undoubtedly give rise to debate, I consented that it lie over under the rules. But the gentleman from Westchester (Mr. Greeley), making the motion as he did, that the resolution lie on the table, there was not time for the suggestion. I would now like to have the journal amended, so that it will appear that the resolution was laid on the table with the consent of the mover. The Convention will remember, in confirmation of my statement, that there was not a dissenting vote to the motion of the gentleman from Westchester.

There being no objection, the correction stated was ordered.

Mr. LAPHAM—The resolution offered by myself on Thursday, was laid upon the table until the committee of sixteen should make a report. It was a special direction and I see that the Journal does not contain it.

There being no objection, the correction stated was ordered.

Mr. Amasa J. Parker, a delegate, appeared in the Convention, and was administered the Consti-

tutional oath of office by the President, and took his seat.

On motion of Mr. SHERMAN, the Convention adjourned.

TUESDAY, JUNE 11, 1867.

The Convention met pursuant to adjournment. Prayer was offered by Rev. J. T. PECK, D. D. The Journal of yesterday was read by the Secretary, and was approved.

Messrs. Francis Kernan and John E. Develin, Delegates duly elected, appeared in the Convention, were administered the Constitutional Oath of office, and took their seats.

Cornelius S. Underwood, Henry A. Gledden and Edward W. Simmons, Assistant Secretaries, Ferdinand DeWigne, Librarian, and James Armstrong, James Tanner, C. V. Schram, David L. Shields, Herman Ruleson, Eugene L. Demers, John Pewit, and William McManus, Door keepers, were administered the Constitutional oath of office, by the President.

The PRESIDENT announced the appointment of Mr. Baker as a member of the Committee on rules in place of Mr. M. I. Townsend who had been excused from serving at his own request.

Mr. SHERMAN from the select Committee on Rules, submitted the report of the Committee.

Mr. SHERMAN—Before the report is read, I desire to state that the rules as agreed upon, are with a single exception, the unanimous report of the Committee, the one exception is that of the previous question. The rules are mainly those of the Assembly, with only such changes as are necessary to adapt them to the different class of business to be performed here. The rules of the Assembly, as far as my observation extends, are the best calculated for the fair transaction of business, of any rules in this country. I propose that the rules should be read at length, and then if it be the pleasure of the Convention, it proceed at once to consider them by sections. I would state further that, a copy of the rules, as they were originally drafted, will be found upon the files of each member. Some changes have been made by the Committee which will be apparent to members, on reading.

The SECRETARY then read the report in words as follows:

## CHAPTER I.

### *Of the Powers and Duties of the President.*

**Rule 1.** The President shall take the Chair each day at the hour appointed for the meeting of the session.

**Rule 2.** He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum.
2. He shall decide all questions of order subject to appeal to the Convention. On every appeal he shall have the right, in his place, to assign his reasons for his decision.
3. He shall appoint all Committees, except where the Convention shall otherwise order.
4. He may substitute any member to perform the duties of the Chair for a period not exceeding two consecutive legislative days.
5. When the Convention shall be ready to go

into Committee of the Whole, he shall name a Chairman to preside therein.

6. He shall designate the reporters for the public press, not exceeding fifteen in number, and shall assign to them their respective seats.

## CHAPTER II.

### *Of the Daily Order of Business.*

**Rule 3.** The first business of each day's session shall be the reading of the Journal of the preceding day and the correction of any errors that may be found to exist therein. After which, except on days and at times set apart for the consideration of special orders, the order of business, which shall not be departed from except by unanimous consent, shall be as follows, viz.:

1. *The presentation of memorials.* Under which head shall be included petitions, remonstrances and communications from individuals and from public bodies.
2. Messages from the Governor.
3. Communications from State officers. Under which head shall be embraced also, communications from public officers and from corporations, in response to calls for information.
4. Notices.
5. Reports of standing committees.
6. Reports of select committees.
7. Resolutions.
8. Unfinished business of the general orders.
9. Special orders.
10. General orders.

## CHAPTER III.

### *Of the Rights and Duties of Members.*

**Rule 4.** The President, or any member, when he shall be recognized in his place, may present, under the proper order of business, any paper of a respectful character, addressed to the Convention, and the same, unless the Convention shall otherwise order shall be referred to the appropriate committee.

**Rule 5.** Every member presenting a paper shall endorse the same; if a petition, memorial, remonstrance, or communication in answer to a call for information, with a concise statement of its subject, adding his name; if a notice or resolution, with his name; if the report of a committee, with a statement of its subject, the name of the committee and of the member making the report; if a proposition of any other kind for the consideration of the Convention, with a statement of its subject, the proposer's name, and the reference, if any, desired.

**Rule 6.** Every member who shall be within the bar of the Convention when a question shall be stated from the chair, shall vote thereon unless he be excused or be personally interested in the question. No member shall be obliged to vote on any question unless within the bar when the question shall be put, but in the case of a division by yeas and nays, may vote, if present before the last name shall be called. The bar of the Convention shall be deemed to include only the floor of the Assembly Chamber and the open spaces adjacent thereto within the doors.

**Rule 7.** Any member desiring to be excused from voting, must make his request before the

roll call shall be commenced. He may then state concisely, without argument, his reasons for asking to be excused, and the question of excusing shall be taken without debate.

#### CHAPTER IV.

##### *Of Order and Decorum.*

**Rule 8.** No member rising to debate, to give a notice, make a motion or present a paper of any kind, shall proceed until he shall have addressed the President, and been recognized by him as entitled to the floor.

**Rule 9.** Where a member shall have the floor for any purpose, no member shall entertain any private discourse or pass between him and the Chair.

**Rule 10.** While the President shall be putting a question, or a division by counting shall be had, no member shall leave his place, or speak, unless to make a privileged motion or state a question of privilege demanding immediate attention.

**Rule 11.** When a motion to adjourn, or for a recess, shall be affirmatively determined, no member or officer shall leave his place till the adjournment or recess shall be declared by the President.

#### CHAPTER V.

##### *Of Order in debate.*

**Rule 12.** No member shall speak more than once to the same question, without leave of the Convention, until every member desiring to speak on the question pending shall have spoken.

**Rule 13.** No remarks reflecting personally upon the character or action of any member shall be in order in debate.

**Rule 14.** If any member, in speaking, shall transgress the rules of the Convention, the President shall, or any member may call to order, in which case the member so called to order, shall not rise, unless to explain or speak in order.

#### CHAPTER VI.

##### *Of Committees and their duties.*

**Rule 15.** Standing Committees shall be appointed by the President to consider and report severally upon the following subjects, and such others as may be referred to them, viz.:

\* \* \* \* \*

*To consist of five members each:*

Privileges and elections.

Printing.

Contingent expenses.

Engrossment and enrollment.

**Rule 16.** All reports of Committees embracing propositions for Constitutional alteration shall be referred as of course to the Committee of the Whole for consideration therein before final action by the Convention.

#### CHAPTER VII.

##### *Of General and Special Orders.*

**Rule 17.** The matters referred to the Committee of the Whole shall constitute the General Orders, and shall be recorded by their titles or subjects in a calendar to be kept for that purpose by the Secretary, in the order in which they shall be referred respectively.

**Rule 18.** Any particular report or other matter

on the General Orders may be made a Special Order for any particular day or from day to day, with the assent of two-thirds of the members voting, and no Special Order shall be postponed or rescinded except by a similar vote.

#### CHAPTER VIII.

##### *Of the Committee of the Whole.*

**Rule 19.** The same rules shall be observed in Committee of the Whole as in the Convention, as far as applicable, except that the previous question shall not apply nor shall the yeas and nays be taken on a division.

**Rule 20.** A motion to rise and report progress shall be in order at any stage, and shall be decided without debate.

**Rule 21.** Subjects shall be taken up in Committee of the Whole in the order in which they shall stand on the General Orders, unless the Committee, by a two-thirds vote, shall, in any case, otherwise direct. The paper under consideration shall be first read at length, unless the Committee shall otherwise order, and shall then be read and considered by sections. All amendments made in Committee of the Whole shall be reported to the Convention for action.

**Rule 22.** If at any time, in the Committee of the Whole, it shall appear that no quorum be present, the Committee shall immediately rise, and the Chairman shall report the fact to the Convention.

#### CHAPTER IX.

##### *On Motions and their Precedence.*

**Rule 23.**—When a question shall be under consideration, no motion shall be received except as herein specified, and motions shall have precedence in the order stated, viz. —

1. For an adjournment.
2. For a recess.
3. A call of the Convention.
4. For the previous question.
5. To lay on the table.
6. To postpone indefinitely.
7. To postpone to a day certain.
8. To commit to a Committee of the Whole.
9. To commit to a Standing Committee.
10. To commit to a Select Committee.
11. To amend.

**Rule 24.** The motion to adjourn for the day, for a recess, for the previous question and to lay on the table, shall be decided without amendment or debate. The respective motions to postpone or commit shall preclude debate on the main question.

**Rule 25.** Every motion or resolution shall, after presentation, be first stated by the President, or on his order read by the Clerk, before debate, and again, if desired by any member, immediately before putting the question. And every resolution and amendment shall be reduced to writing if the President or any member desire it.

**Rule 26.** After a proposition shall have been stated by the President, it shall be deemed to be in the possession of the Convention, but may be withdrawn at any time before it shall be decided or amended.

**Rule 27.** The motions to adjourn or take a recess shall be always in order when made by a member entitled to the floor.

**Rule 28.** No motion for a reconsideration of any

vote shall be in order unless made on the same day or the next following legislative day on which the question proposed to be reconsidered shall have taken place; nor unless moved by one who shall have voted in the majority. After a motion for a reconsideration shall have been put and lost, it shall not be renewed without the unanimous consent of the Convention.

**Rule 29.** The previous question shall be, "*Shall the main question be now put;*" and if determined in the affirmative, no further debate or amendment shall be in order, and the main question shall be on the passage of the resolution or other matter under consideration; but when amendments shall be pending, the question shall be first taken on the amendments in their order; and when amendments shall have been recommended by the Committee of the Whole, and not acted on by the Convention, the question shall be taken upon such amendments in like order.

## CHAPTER X. *Of Resolutions.*

**Rule 30.**—The following classes of resolutions shall lie over one day for consideration, after which they may be called up as of course, under their appropriate order of business:

1. Resolutions containing calls for information from any of the Executive Departments, from State, county or municipal officers, or from any incorporate bodies.

2. Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses.

**Rule 31.** All resolutions for the printing of an extra number of documents, shall be referred, as of course, to the Standing Committee on Printing, for their report thereon before final action by the Convention.

**Rule 32.** All resolutions authorizing or contemplating expenditures for the purposes of the Convention, shall be referred to the Standing Committee on Contingent Expenses, for their report thereon before final action by the Convention.

## CHAPTER XI.

### *Miscellaneous Provisions.*

**Rule 33.** The privileges of admission to the floor of the Convention shall be confined to the following descriptions of persons, viz.:

1. The Governor and Lieutenant-Governor.
2. The Heads of the State Executive Departments, and their Deputies.
3. Ex-Governors of the State.
4. Members of the United States Congress.
5. Officers of the Convention.
6. Reporters of the press, duly assigned as such by the President of the Convention.
7. Officers or ex-officers of the United States army or navy who have received the thanks of Congress.

**Rule 34.** In cases of the absence of a quorum at any session of the Convention, the members present may take such measures as they may deem necessary to secure the presence of a quorum, and

may inflict such censure as they may deem just, on those who on being called on for that purpose shall render no sufficient excuse for their absence.

**Rule 35.** If any question contain several distinct propositions, it shall be divided by the President, at the request of any member, provided each subdivision if left to itself, shall form a substantive proposition; but the motion to strike out and insert shall be indivisible.

**Rule 36.** The yeas and nays shall be taken and recorded in the journal on any question when demanded by one-fifth of the members present, except in cases where such a division shall have been already ordered on a pending question.

**Rule 37.** The journal of each day's proceedings shall be printed so that it shall be laid on the desks of members within two days after its approval.

**Rule 38.** Files of all documents ordered to be printed, shall be prepared and kept by the sergeant-at-arms, and one copy shall be placed upon the desk of each member of the Convention; one copy shall be supplied also to the secretary, one to each of his assistants, one to the stenographer, one to the librarian and one to each reporter of the press.

**Rule 39.** A similar allowance for stationery, as is provided for the use of the members, shall be made to each officer of the Convention, except messengers, and a similar allowance shall also be made to each reporter.

**Rule 40.** No standing rule of the Convention shall be suspended, amended or rescinded, unless one day's notice of the motion therefor shall have been given; nor shall any amendment or repeal be then made, except by the vote of a majority of all the members elected to the Convention. But such notice shall not be required on the last day's session. The notice and motion for a suspension, shall each state specifically the number of the rule and the object of the proposed suspension, and every suspension on such notice and motion, shall be held to apply only to the particular object or objects specified therein.

**Rule 41.** All questions relating to the priority of business, that is, the priority of one subject matter over another under the same order of business, the postponement of any special order, or the suspension of any rule, shall be decided without debate.

**Rule 42.** There shall be printed, as of course, and without any special order, 800 copies of all reports of committees on the subject of Constitutional revision, and of all reports and communications made in pursuance of the order or request of the Convention; and 800 copies of the journal; which numbers shall be denominated the usual number.

**Rule 43.** The Governor and each head of the State Executive departments, shall be furnished by the printer with a copy of the official documents of the Convention out of the usual number printed.

**Rule 44.** The sergeant-at-arms shall receive from the printer all matter printed for the use of the Convention, and shall keep a record of the time of the reception of each document, and the number of copies received, and shall cause a copy of each to be placed on the desks of the members,



officers and reporters entitled to receive them, immediately after their reception by him.

**Rule 45.** There shall be bound, out of the usual number printed, three hundred copies of the journal and three hundred copies of the reports and documents of the Convention, to be distributed as follows, viz.: To each member of the Convention, one copy; State Library, five copies; the library of the Senate, sixteen copies; the library of the Assembly, fifty copies; the Counties and Public offices, sixty copies.

**Rule 46.** The Assistant Sergeant-at-Arms shall perform the duties of Postmaster of the Convention, and as such shall receive, distribute and dispatch such mail matter as shall be deposited in his office, addressed to or by members of the Convention; and the Sergeant-at-Arms shall assign to the service of the Acting Postmaster such number of the messengers as he may need to aid him in the performance of his duties.

**Mr. SHERMAN**—I now move that the rules be read separately, and except where a separate vote shall be demanded, or they be amended, that they be considered as adopted without a formal vote.

**Mr. VERPLANCK**—I think we can hardly pass upon these rules by a casual reading of them. I understood the gentleman from Oneida [Mr. Sherman] to say, they were substantially the rules of the Assembly, but in hastily running them over I find several very important variations of those rules. I suggest, therefore, that they can hardly be considered now.

**The PRESIDENT**—Does the gentleman make any motion?

**Mr. DEVELIN**—I move that the consideration of the report be postponed until to-morrow.

**Mr. SHERMAN**—I have no objection whatever to the postponement if the Convention desire it.

The question being put upon the motion of Mr. Develin, it was declared to be carried.

**Mr. HARRIS**, from the Committee of Sixteen, appointed to consider and report upon the best practical mode of proceeding to the revision of the Constitution, made the following **REPORT**:

The Committee appointed to consider and report to the Convention the best practicable mode of proceeding with the revision of the Constitution, respectfully report

That, while, in their opinion there are some, perhaps many parts of the Constitution which need no alteration, yet, as the whole fabric of the fundamental law of the State has been committed to this Convention with instructions to examine it and propose for the consideration of the people such amendments as it may be thought to require, the Committee have deemed it their duty to recommend the examination of all the provisions of the Constitution by appropriate committees.

They therefore recommend the adoption of the following resolution:

**Resolved**, That committees be appointed to consider and report on each of the following subjects, and that the several parts of the Constitution which relate to those subjects respectively be referred to such committees.

1. On the Preamble and the Bill of Rights.

2. On the Legislature, its organization and the

number, apportionment, election, tenure of office, and compensation of its members.

3. On the powers and duties of the Legislature except as to matters otherwise referred.

4. On the right of suffrage and the qualifications to hold office.

5. On the Governor and Lieutenant Governor, their election, tenure of office, compensation, powers and duties, except as otherwise referred.

6. On the Secretary of State, Comptroller, Treasurer, Attorney-General, and State Engineer and Surveyor, their election or appointment, tenure of office, compensation, powers and duties.

7. On town and county officers other than judicial, their election or appointment, tenure of office, compensation, powers and duties.

8. On the Judiciary.

9. On the finances of the State, the Canals, except their care and management, the public debt, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto.

10. On the Superintendence and Management of the Canals, and the proper officers to be charged therewith, and the mode of their election or appointment.

11. On cities, their organization, government and powers.

12. On counties, towns and villages; their organization, government and powers.

13. On currency, banking and insurance.

14. On corporations other than municipal, banking and insurance.

15. On State Prisons.

16. On the pardoning power.

17. On the militia and military officers.

18. On education and the funds relating thereto.

19. On future amendments and revisions of the Constitution.

The Committee also recommend that the Committee No. 9 on the "Finances of the State" consist of sixteen members; that Committee No. 8, "on the Judiciary" and Committee No. 11 "on Cities," consist of fifteen members each, and that the other Committees consist of seven members each.

The Committee further recommend that the committees, in making their reports, be allowed, at their option, to state briefly in writing the reasons in support of their conclusions.

All of which is respectfully submitted.

**IRA HARRIS**, *Chairman*.

**Mr. FULLER** moved that the report be referred to the Committee of the Whole.

Which was lost.

**Mr. ALVORD** moved that the report lie upon the table and be ordered to be printed.

Which was carried

**Mr. DUGANNE** offered the following resolution:

**Resolved**, That to the permanent committees appointed by this Convention shall be added a standing committee, to be known as the Committee on Industrial Interests, to which shall be referred all matters pertaining to the rights and claims of labor.

**Mr. FIELD** moved that the resolution be referred to the same committee of the whole having charge of the report.

The PRESIDENT—That has not been referred.

Mr. FIELD—Then I move that it lie on the table and be printed.

The question being taken on the motion of Mr. Field, it was declared carried.

Mr. C. C. DWIGHT offered the following resolution:

*Resolved*, That the Sergeant-at-Arms be directed to cause the street bounding this Chamber on the south to be strewn with tan bark or other suitable substance, and that it be kept there during the session of this Convention.

Mr. C. C. DWIGHT—It is impossible for gentlemen in this part of the House to hear what is going on in the Convention, on account of the noise from that street.

Mr. AXTELL—I understand that the Secretary of the Convention has had some communication with the Mayor of the City with regard to this matter. I have been informed that this will be done without the action of this Convention, or without any request from it.

Mr. TAPPEN—I propose to amend the resolution by making it a resolution of inquiry instead of a resolution of action.

The PRESIDENT—Will the gentleman reduce his resolution to writing so it can be read by the Secretary?

Mr. TAPPEN offered the following amendment:

"That the Secretary be instructed to confer with the city authorities for the purpose of covering the pavement in front of the capitol."

Mr. HARRIS—I would suggest to my friend that he had better let this lie upon the table for the present. I am persuaded that the Mayor of the city, the moment his attention is called to the subject, will provide a remedy against the evil spoken of.

The resolution of Mr. C. C. Dwight and the substitute of Mr. Tappen were laid on the table with the consent of the movers.

Mr. POND—I move to amend the amendment and the resolution by striking out all after the word *resolved*, and inserting the following in lieu thereof:—

The PRESIDENT—The Chair would inform the gentleman from Saratoga [Mr. Pond] that the subject is not now before the Convention, the resolution by consent having been laid on the table.

Mr. POND—Then I shall offer the resolution as a distinct proposition.

Mr. HARRIS offered the following resolution:

*Resolved*, That the Clerk of the Court of Appeals be requested to furnish this Convention with a statement of the number of appeals now pending in the Court, distinguishing the years in which such appeals were brought. Also, the number of cases which were determined by the Court of Appeals during the years 1862, 1863, 1864, 1865, and 1866, respectively.

Mr. KERNAN—I trust that the gentleman will allow that to be amended so as to state the districts from which the cases came, which can easily be furnished by the Clerk.

Mr. HARRIS—I accept the amendment.

Mr. S. TOWNSEND—I would like to ask the gentleman from Albany [Mr. Harris], who offered the resolution, whether it will be possible to classify that return so that we can form an idea

of the nature of the appeals; what proportion were criminal, what proportion were from corporations, and what in reference to other subjects.

Mr. HARRIS—I would say in reply to the gentleman that I apprehend that it will be impossible for the Clerk of the Court of Appeals to make that discrimination.

M. BICKFORD—I would also ask, that the resolution be so modified that information be furnished to the Convention, not only of the causes within the knowledge of the Clerk of the Court of Appeals, but also of all causes that are pending in that Court. I understand there are a great many causes pending in the Court not upon the calendar, of which the clerk may know nothing.

Mr. FIELD—I rise to a question of order, that by the rules under which we are acting, this resolution giving rise to debate must lie over one day.

Mr. HARRIS—I think it will give rise to no further debate.

Mr. BICKFORD—I am informed that the Clerk has got all the information that I asked for.

Mr. ROBERTSON offered the following amendment to the resolution of Mr. Harris:

And also the amount involved in each case where the matter in dispute is a sum of money.

Mr. STRONG—I think we had better lay this upon the table until to-morrow, in order to give us time to ascertain what facts we really need to have reported by the clerk. There are some facts in addition to those already mentioned, and I suggest that the matter lie over until to-morrow.

The PRESIDENT—Will the gentleman put that in the form of a motion?

Mr. STRONG—I make that motion.

The question being put on the motion of Mr. Strong, it was declared to be lost.

Mr. STRONG—I propose to debate this resolution, and I suppose under the rule it will have to lie over. I wish to make some remarks upon the subject.

The resolution was accordingly laid over.

Mr. M. H. LAWRENCE offered the following resolution:

*Resolved*, That the Chair appoint a Committee of seven whose duty it shall be to examine into and report to this Convention, what offices if any may be abolished without detriment to the public service, and expressly all those created by law since the revision of the Constitution in 1846.

Mr. ALVORD, moved that the resolution lie upon the table and be printed.

Which was carried.

Mr. COLAHAN offered the following resolution:

*Resolved*, That a further Committee of eight be appointed to take into consideration the educational interests of the State.

Mr. SEYMOUR moved that the resolution lie on the table and be printed.

Which was carried.

Mr. HITCHCOCK offered the following resolution:

*Resolved*, That the Secretary of this Convention be requested to procure twenty diagrams of this Chamber for each member, officer and reporter of this Convention, provided they be obtained at a cost not exceeding the cost of those furnished the Assembly last winter.

Mr. LARREMORE moved that that resolution be referred to the appropriate standing Committee, when appointed.

Which was carried.

Mr. GRAVES offered the following resolution :

*Resolved*, That a committee of five be appointed by the Chair to report to the Convention at as early a day as practicable, whether in their opinion a provision should be incorporated in the Constitution authorizing the women of this State to exercise the elective franchise, when they should ask that right by a majority of all the votes given by citizen females over the age of twenty-one years, at an election called for this purpose, at which the women alone shall have the right to vote.

Mr. LOEW moved that the resolution lie on the table and be printed.

Which was carried.

Mr. FIELD offered the following resolution :

*Resolved*, That there be a committee of seven on claims against the State and their adjudication.

Mr. FIELD moved that the resolution lie on the table and be printed.

Which was carried.

Mr. VAN CAMPEN offered the following resolution :

*Resolved*, That a standing committee of seven be appointed on the subject of the relations of the State to Indian tribes remaining in the same.

Mr. VAN CAMPEN moved that the resolution lie on the table and be printed.

Which was carried.

Mr. S. TOWNSEND offered the following resolution :

*Resolved*, That it be referred to an appropriate Committee, to report to this Convention the policy of making Constitutional provision for the collection of all tolls, dues and taxes, authorized by the laws of this State, after the 1st of January, 1868, in specie or its equivalent, and that thereafter the payments made by this State, and the counties and towns thereof, shall be in like currency, *Provided*, That thereafter no salary of any office existing on the 1st of January, 1861, shall be greater than the one existing at that date, until otherwise changed by the Legislature.

By consent of the mover, the resolution was laid on the table.

Mr. T. W. DWIGHT offered the following resolution :

*Resolved*, That one of the subjects upon which a standing committee shall be appointed shall be the creation, superintendence and visitation of charities, both public and private, especially those which receive pecuniary aid from the State.

Mr. DWIGHT moved that the resolution lie on the table and be printed.

Which was carried.

Mr. GREELEY—I desire to call up the resolution which I offered in the Convention on the first day of its session, and which was by the Convention ordered to be considered this day, its purpose being to secure information relative to the canals.

The SECRETARY read the resolution referred to, calling upon the Comptroller for the required information; also, the pending

amendments of Mr. E. Brooks, to strike out the word "comptroller" and insert in lieu thereof the words "Auditor of the Canal Department," and "*provided* said information is not already prepared by the Canal Department for the Convention."

Mr. GREELEY—I object, with great respect to the mover of the amendment offered, on these grounds: The comptroller is an officer elected by the people of the State, known to the Constitution and laws of the State as its chief financial officer. The Canal Auditor, I believe, is not an officer known to the Constitution, at any rate is not chosen by the people, and he holds a subordinate position. I desire this very important information on the responsibility of the highest financial officer of the State. I should not wish, with very great respect to the Canal Auditor, that he should be required to furnish us this information. The Comptroller, if he wishes, may apply to the Canal Auditor or any other source for information, but let us have this information given to us on the responsibility of the chief financial officer of the State. I trust, therefore, that the amendment of the gentleman from Richmond [Mr. E. Brooks] will not be adopted. I gave notice that I would accept all amendments proposing to enlarge the scope of inquiry. If any gentleman wishes further information in regard to the Canals, I say I accept his amendment, but I will accept none which seems to limit the scope nor to lower, if I may so speak, the plane of the inquiry. If then, there is information provided or providing for us by some officer which will furnish a part of what I want, I do not see that that is any reason for refusing this inquiry or rejecting it. If the Comptroller has this information at his elbow prepared in some other form in answer to some other inquiry, it would be very easy for him to transcribe it and to present it in answer to this inquiry. I am confident all I call for may be given us on two pages of a Convention document. I wish the information presented in such condensed form that we may see the cost, current expenses and current income of the Canals at one view on one page, and then we may see what canals we are to credit with profit to the State, and what canals are chargeable with loss. When we have this information it will be perfectly easy for me, and I doubt not for others, to act upon the subject of the canals intelligently and with clear regard to the financial as well as the more important interests of our constituents. Mr. President, I am exceedingly desirous that this Convention, its deliberations, and the results of those deliberations, shall commend themselves to the favor—the emphatic decided favor—of the people of the State. I believe the Constitution under which we now live and for which I very earnestly electioneered and voted on its adoption, is imperfect in many respects, and that abuses especially with regard to the canals have been developed under its action. I am desirous that the Convention shall so act, with such openness, with such energy, and with such industry as shall commend its doings to the favor of our constituents, and enable its results to be sustained by the emphatic vote of the people of the State. I trust,



therefore, that this inquiry will not any longer be denied.

Mr. CHURCH—It seems to me, sir, that neither the Comptroller nor the Auditor of the Canal department is the proper person to direct this resolution to, but that it should be directed to the Commissioners of the Canal fund, who have charge of the finances relating to the canals. At the head of that Commission is the Comptroller, and the Auditor of the Canal department is the Secretary of the Board. By directing it to the Commissioners of the Canal Fund, we shall have the benefit of the experience and the knowledge of the Comptroller and also of the Auditor. I would suggest to the gentleman from Westchester [Mr. Greeley] if that is not the proper direction for such a resolution as this.

Mr. E. BROOKS—My reason for offering the amendment, to which the gentleman from Westchester objects, was that it was, in my judgment, in conformity to law, and that the Legislature of this State had so acted in defining the duties of the Canal Auditor and in so separating his bureau from that of the State Comptroller as to make it imperative upon him to furnish such information as is called for by the pending resolution. Now, sir, let me read from the law:

"All the powers and duties of the Chief Clerk of the canal department, and all the powers and duties of the Comptroller in relation to the canals, except his powers and duties as Commissioner of the canal fund, are hereby transferred to, and vested in the said auditor; and the said auditor shall also be secretary of the Commissioners of the Canal fund."

Now, Mr. President, here the law is complete as to the duties of the Canal Auditor furnishing such information as is called for by the resolution of the gentleman from Westchester [Mr. Greeley], and the various pending amendments. Every body knows from the practice of the office under its present *regime*, that any information sought for in regard to the administration of the canals of this State is sought for from the Canal Auditor; and, I believe, the State Comptroller is as well convinced as I am that this is not a proper inquiry to make of him; and if this resolution should be adopted by this body, he would either return it to the body making it, with a statement that it was no part of his duty to furnish such information or else hand it over immediately to the Canal Auditor, who is the proper officer to furnish it. The Canal Auditor is as much a state officer, though not elected by the people, as the State Comptroller himself, and he is the proper person to make the inquiry of. Now in regard to the other amendment I submit. I have proposed that this information shall be furnished, provided it is not already prepared by the State officers for the use of the Convention, and if the gentleman from Westchester [Mr. Greeley] will take the trouble to read and analyse the financial report of the Auditor of the Canal Department, of the State of New York, of January 1st, 1867, and submitted to the Legislature, he will find in detail the information which he requires by his resolution. Now, Mr. President, upon another subject. If we commence by making these various inquiries from the State officers to furnish informa-

tion which is already at our hands, we shall so multiply the labors of the respective heads of the departments and bureaus as to withdraw them from their necessary daily duties. We can get a great deal of the information called for by a little labor and a little inquiry on our own part. And, there is, let me say, from some observation, no greater abuse in legislative bodies or in conventions, than in the constant making of inquiries in regard to information which can be furnished with very little labor on the part of legislators or members of the convention themselves. It was for this reason that I moved the second amendment, "provided that the information is not already prepared for the use of the Convention."

Mr. ALVORD—I agree with the gentleman from Orleans, [Mr. Church] in regard to the facts as to the custody of the finances of the canal department. They are under the law, and they are in fact in the hands of the Auditor. They make no part or parcel of the business of the Comptroller or his office. The finances of the State will be found in the Comptroller's office. If the resolution shall pass as proposed by the gentleman from Westchester, [Mr. Greeley,] as has well been said by the gentleman from Richmond, [Mr. E. Brooks,] the Comptroller would have to return the resolution back to this body stating that the information called for was not in his bureau. Any information he might give he would have to take second hand from the Auditor in the end. It strikes me it is very proper that the resolution should be directed to the financial officer of the Canal Department, who is the Auditor, and by whom the accounts are kept. In regard to the remarks made by the gentleman from Richmond [Mr. E. Brooks], I wish to say that I believe that all the information, even to the minutest detail called for by the resolution of the gentleman from Westchester, and by the amendment of the gentleman from Ontario, [Mr. Lapham] and all further amendments offered by the gentleman of the Convention, is already prepared, and will make a part of the manual which is to be laid upon the desks of the members of this Convention. I can speak advisedly so far as this, that a large portion of that information in detail, I have seen myself in manuscript form. I am aware of the fact that most of it, if not the entire of it, is to be laid on our desks in that manual. It is quite as well to get the information there as to go to the past reports of the Auditor. It strikes me also that it is eminently proper that this resolution, in the first place, should be directed to the proper officer and that we should then add a proviso that the information is to be furnished if it is not already contained in the forthcoming manual.

Mr. CLINTON—It seems to be, Sir, that there is one rule we are in danger of losing sight of. If that rule is to be observed, I am ignorant at the present time as to whether I ought or ought not to vote for this amendment. I understood the gentlemen from Orleans [Mr. Church,] to state that the information which this resolution asks for lies in the possession of the Auditor in three different capacities, first, as Auditor of the Canal department, second, as Secretary of the Commissioners of the Canal Fund, and third, as a Secretary of some other canal board. Now, then,

I believe it is not exactly conformable to the dignity of this State Convention ever to call upon a subordinate for information. The inquiry ought to be directed to the head of the department, and this information is so distributed that I do not see how properly the Canal Auditor can answer it, until he has referred to his head—the Commissioners or board of which he is acting as Secretary. Suppose, for instance, our Secretary should be called upon by a resolution of some outside board or body for information. Would he give it? Would he not be required by his duty first to inquire of this body whether it was information he could properly give? Would he not first have to procure our permission? I think if this information is to be derived in this way, we ought not to apply to the Secretary of the board but to the board itself.

Mr. E. BROOKS—I read one of the provisions of the law in making my previous remarks, and I will in a moment read another. In the first place let me say that the Canal Auditor is as much a state officer as the State Comptroller. He is appointed by the Governor of the State, or is nominated by the Governor and is confirmed by the Senate, and one of his powers and duties to which I did not refer is as follows:

“The accounts of receipts and payments on account of the canals and the canal fund and debt, heretofore kept by the Commissioner of the Canal Fund, shall on, and after the first day of October next be kept by said Auditor.”

This information is in his precise custody and it is in the custody of no other member of the State Government

Mr. GREELEY—The Canal Auditor, either is or is not a subordinate of the chief financial officer of this State—the Comptroller—as I understand it. I am not decided whether he is or is not, but I know who is the chief financial officer, and I wish the inquiry to be directed to him. I regard the Canal Auditor law, all the way through, as one of exceedingly doubtful propriety. But no matter about that. I prefer to keep out of that controversy; but I will say I have no doubt that the Comptroller will furnish the information, and I hold him to be the proper officer to furnish it. I do not believe the Constitution ever intended that the most important part of the duties of the chief financial officer of the State should be taken away from him, by law, and conferred upon a subordinate. At all events, I shall insist on the adoption of the original resolution.

Mr. SPENCER—I observe that by the proceedings of the Constitutional Convention of 1846, a similar resolution of inquiry was directed to the Comptroller, and I presume that the information can be obtained from that officer now.

Mr. SILVESTER—Mr. President, I am as much in favor as any gentleman in the Convention, and as desirous of obtaining all the information possible with respect to the State canals—the expenses of operating them, and the expenses connected with improving them. There seems, however, to be some difference of opinion as to which officer of the State is the proper person to whom enquiries shall be addressed. In addition, as has been suggested by the gentleman from Onondaga [Mr. Alvord], the Legislature provided in the

act calling this Convention for the furnishing of a manual to the Convention. One part of that manual has been already laid on our tables; the second part has also been laid upon our tables, and this second part embraces very many statistics—“statistics,” as stated on the volume itself, “of the Executive Department, the Secretary of the State and Comptroller's Departments.” It says in addition, that “the remainder of the volume will be furnished as soon as possible, and when completed will be bound.” The remaining volume will undoubtedly contain all the information which is asked for by the resolution of the gentleman from Westchester [Mr. Greeley], and amended by several other gentlemen, and until that volume is furnished, and until we are able to see what the contents of that volume will be, and how far it will embrace these subjects it seems to me we are occupying the time and attention of the Convention and multiplying the labors of the state officers unnecessarily, I would move therefore, if in order, that the consideration of this resolution be further postponed until Tuesday next.

Mr. OPDYKE—I hope that the motion that has just been made will not prevail. I hope also that the amendment which is pending will not prevail. In common with the gentleman from Westchester [Mr. Greeley], I think the chief financial officer of the State, is the person to whom the Convention should look for information upon matters affecting the financial interests of the State. It seems that that was the course pursued by the Convention of 1846, which met to revise the Constitution of our State, and to my mind it is proper that we should go to the same source. The law, portions of which have been read by the gentleman from Richmond [Mr. E. Brooks], shows that the Legislature in their wisdom saw fit to go to other sources. It does not follow that we should adopt the same course. We are seeking information, and I entirely agree with the gentleman from Westchester [Mr. Greeley] that we should get it from the financial head of the State. Now, a single word in support of the original resolution of the gentleman from Westchester [Mr. Greeley.] It has been said that we may expect this information—

The PRESIDENT—The Chair will inform the gentleman from New York [Mr. Opdyke], that the question now pending is to postpone the consideration of the question until Tuesday; that motion does not involve the merits.

The question was then put on the motion of Mr. Silvester to postpone the consideration of the resolution of Mr. Greeley, and it was declared lost.

Mr. OPDYKE—The original resolution, Mr. President, was evidently drawn with great care, judgment and skill. I hold it to be of the highest importance. It calls for information which is very extensive and very comprehensive, and which is necessary for us if we desire to act wisely upon the subject of the canals. If the resolution shall be adopted, and presented to the Comptroller, and he is prepared to furnish us with the information in the precise form called for, he has only to say so, and we shall receive it. If he is not, then we desire that he should prepare it in that form and send it here, that we may have it

printed for the use of members. I think there should be no serious objection to the resolution.

The President announced the question before the House to be on the amendment of Mr. Brooks, "provided that said information is not already prepared by the Canal Department for the Convention."

Mr. VERPLANCK—How is that to be settled? I should like to know who is to judge whether the book contains the information or not.

Mr. HATCH—I suppose the Convention will undoubtedly decide when the information comes in. I desire to say that a good deal of importance has been attached to the fact that the Convention of 1846 called on the Comptroller for information instead of the Auditor. If my recollection is correct, there was no Auditor then in existence. There was no such department until 1848. Therefore, I deem it very important that the resolution should go to the Auditor who is really the financial officer of the department, and the only officer who can give the requisite information.

The question was then put on the amendment of Mr. Brooks, "providing that such information is not already prepared by the Canal Department for the information of the Convention," and it was declared adopted by the following vote, the ayes and nays being called for.

**Ayes**—Messrs. Alvord, Andrews, Archer, Artell, Baker, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, W. C. Brown, Burrill, Case, Cassidy, Champlain, Cheritree, Chesebro, Clark, Clinton, Colahan, Comstock, Conger, Cooke, Daly, Devellin, Eddy, Ely, Endress, Ferry, Field, Flagler, Fowler, Fuller, Garvin, Gerry, Graves, Hadley, Hale, Hammond, Hitchman, Houston, Jarvis, Kernan, Krum, Larremore, A. Lawrence, A. R. Lawrence, Livingston, Loew, Lowrey, Luddington, Matrice, McDonald, Merrill, Merwin, Monell, More, Murphy, Nelson, Paige, A. J. Parker, C. E. Parker, Potter, President, Rathbun, Robertson, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Schumaker, Seaver, Seymour, Silvester, Sheldon, Smith Strong, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Cott, Veeder, Wakeman, Wickham—92.

**Nays**—Messrs. A. F. Allen, C. L. Allen, Church, Corbett, Curtis, Duganne, O. C. Dwight, T. W. Dwight, Francis, Greeley, Gross, Hardenburgh, Hatch, Hitchcock, Hutchins, Ketcham, Kinney, Lapham, M. H. Lawrence, Merritt, Miller, Morris, Opdyke, Pond, Prindle, Prosser, Reynolds, Root, Rumsey, L. W. Russell, Spencer, Stratton, Tilden, Van Campen, Verplanck, Wales—38.

Mr. CHURCH—I move to amend the amendment by striking out the word "Auditor" and inserting in lieu thereof, "the Commissioners of the Canal Fund." Practically it would make no particular difference whether this resolution is directed to the Auditor, the Comptroller, or the Commissioners of the Canal Fund, as the Convention would doubtless, get the required information from either one of them. But since the question has been raised, I submit to the Convention that the only proper and legitimate source for this information, is the Commissioners of the Canal Fund. The Constitution recognizes the Board of Commissioners, consisting of Lieutenant Governor, the Comptroller, the Secretary of State, the Attorney General and the Treasurer, as the Commissioners of the Canal Fund, and they are charged, by law, with the superintendence and management of the canal fund, and it is made their duty to manage to the best advantage, all

things belonging to that fund and to recommend from time to time to the Legislature, the adoption of such measures as they may think proper for the improvement of the fund, and to report to the Legislature at the opening of every session thereof, the state of the fund. The Canal fund is under the control and management of the Commissioners of that fund, and the accounts are now kept in the office of the Auditor of the Canal Department. Those accounts were formerly kept in the office of the Comptroller, but the control and management, as I said before, are in the hands of the Commissioners and they are the responsible officers to call upon, as it seems to me, for any information in relation to the fund; and therefore I hope the amendment will be adopted.

Mr. GREELEY—I am perfectly willing to accept the amendment of the gentleman from Orleans [Mr. Church.]

Mr. HATCH—We are not inquiring about the canal fund, but we are inquiring about certain details and statistics about canals, their condition, debts, &c. That is the object of this inquiry, and it is a subject which is not in the hands of the Commissioners of the Canal Fund, and does not belong to any other department except that of the Canal Auditor.

Mr. TILDEN—I understood that the gentleman from Westchester [Mr. Greeley] has accepted the amendment.

The PRESIDENT—He was not the mover of the original amendment as the chair understands it.

The question being put on the amendment of Mr. Church to the amendment of Mr. Brooks, to insert the words "Commissioners of the Canal Funds" in lieu of the word "Auditor," it was declared adopted.

Mr. GREELEY—I now accept the amendment of the gentleman from Orleans [Mr. Church] to insert the Commissioners of the Canal Fund in place of the Comptroller.

The question was then put on the resolution of Mr. Greeley as amended, and it was declared adopted.

Mr. CLARK offered the following resolution:

*Resolved*, That the preamble of the Constitution be so amended as to read as follows: We, the people of the State of New York, grateful to Almighty God for our freedom, and humbly acknowledging Him as the ultimate source of all authority and power in civil government, and that states and nations, no less than individuals, are responsible to Him, and subject to His moral laws, in order to secure the blessings of liberty, justice, and good government, to ourselves and our posterity, do ordain and establish this Constitution.

Which was laid on the table and ordered to be printed.

Mr. McDONALD offered the following resolution

*Resolved*, That the Sergeant-at-Arms, of this Convention, be authorized to place on the files of each member, a printed copy or pamphlet form of the *verbatim* Report of the debates of this Convention within two days after such debate or portion of debate shall have been had, and that the Sergeant-at-Arms be also authorized, within the

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same time, to furnish and forward one such of debates, to each Editor (or if there be more than one Editor) then to the Editor-in-chief of every newspaper regularly issued and published within this State to subscribers in interval one week, or less. But in case the same persons or persons shall be the Editor or Editors of more than one such newspaper, then only one copy of such debate shall be furnished such editors.

Mr. E. BROOKS—moved that the resolution be laid on the table and printed. Which was carried.

Mr. SHERMAN offered the following resolution: Resolved, That the rules proposed by the Committee on that subject be printed, as reported to-day.

Mr. E. BROOKS—I move, with the consent of the mover of this resolution, that there be inserted in the proper place,—chap. 6,—the report which has been submitted from the committee of six, which will undoubtedly become a part of the proceedings of this body, or else let the printing be postponed until the report of this Committee is acted upon. Perhaps it is better to postpone it until the report can be acted upon. I move it be postponed.

Mr. GREELEY—I hope not, Mr. Chairman, unless we have something to act upon to-morrow.

The question being then put upon the motion to postpone, it was declared to be lost.

Mr. GREELEY—I now move that the resolution be printed, with the plan of the Committee on rules, inserted in the proper place, in the report of the Committee upon rules.

Mr. SHERMAN—I accept that amendment.

Mr. DEVELIN—I make the motion that the consideration of the report of the Committee on rules should be postponed until to-morrow.

The PRESIDENT.—The Chair will inform the gentleman from New York [Mr. Develin], that this is simply a question of printing.

Mr. DEVELIN—It will be impossible for gentlemen to know what these rules are, unless they see them upon their tables or somewhere else; they are set down for consideration for to-morrow, I wish to have them upon our tables to-morrow, so that we can know what they are. The rules as reported to-day are different from the printed copies as laid upon the tables of members of this Convention.

Mr. SHERMAN—I will inform the gentleman that the very object of my motion, is that the rules may be printed and laid upon our tables to-morrow morning.

The question then recurred upon the resolution of Mr. Sherman as amended, and it was decided to be adopted.

Mr. MILLER—I wish to ask leave of absence for my colleague, Mr. Grant, for six days, as detained by important business.

Mr. BICKFORD—I would like to raise a question, whether this motion is necessary.

The PRESIDENT.—The Chair will leave for the Convention to establish—to establish its own rules. The Chair does not deem itself possessed of power to grant leave of absence.

The question being put, leave of absence was granted.

On motion of Mr. LOW, the Convention adjourned.

Convention met pursuant to adjournment. Prayer was offered by Rev. AMBROSE O'NEIL. The SECRETARY read the journal of yesterday, which was approved.

The appointment of William Gordon as one of the messengers of the Convention was revoked by aye, on the ground that he is entirely unimpaired.

NELSON—I would like to have it appear here upon the journal that the oath of office was administered to me yesterday. It is perhaps, of importance in drawing my name, not otherwise.

As being no objection, the journal was corrected accordingly.

GREELEY—The journal does not show that the Convention adopted the amendment of the gentleman from Orleans [Mr. Church]. That amendment prevailed by striking out the amendment of the gentleman from Richmond [Mr. E. Brooks]. Then I accepted that amendment, and made it a part of the original resolution. There was a vote taken by the Convention, and the journal does not show how it became a part of the resolution.

PRESIDENT—Does the gentleman make a motion?

GREELEY—I move that the Journal be corrected so as to show how the amendment of the gentleman from Orleans [Mr. Church] was adopted by the Convention. That amendment as amended was accepted by the mover of the resolution, and there was no second vote taken on it.

E. BROOKS—The motion of the gentleman from Orleans [Mr. Church] was to amend the resolution. That prevailed, and it was out of the power of the gentleman having introduced the original proposition to accept the proposition in the third degree by the gentleman from New York [Mr. Church].

PRESIDENT—The Chair understands the Secretary that the fact is as stated by the gentleman from Richmond [Mr. E. Brooks].

GREELEY—The simple fact is, this Convention decided that the amendment of the gentleman from Richmond should be amended in a certain way. It did not adopt the amendment as amended. It had still to be adopted by this Convention in some form. It was simply a substitute for his amendment. It was not then a part of the resolution; it was not accepted by the Convention; it was simply a part of the gentleman's amendment, and no vote was taken by the Convention upon adopting it. I stated I would accept that amendment as amended by the amendment of the gentleman from Orleans [Mr. Church].

PRESIDENT—The Journal will be corrected if there be no objection.

SHERMAN moved that the Convention proceed to the consideration of the report of the Committee on rules.

It was carried.

E. BROOKS—I wish to say as a member of the Committee on rules and orders that the Committee were unanimous in their report with the exception of a single rule—that is, the rule relating to the previous question, from which I



as one of the minority dissented. My colleague, also, in the minority, was absent, and therefore gave no opinion upon the subject. I will state, sir, very briefly, my reasons for dissenting from the report in this particular. I do not think it becoming in a State Convention to adopt the previous question, the effect of which is to cut off all debate and to stop deliberation and determination in a becoming manner upon various propositions which may be before this body. The previous question is unknown to bodies which are peculiarly of a deliberative character, like the Convention which is now assembled in this State. It is unknown in the State Senate; it is unknown to the United States Senate, and according to my best judgment, although adopted in a modified degree in the Convention of 1846, it has been very rarely adopted in Conventions of so great importance as the one now assembled. If it be necessary by-and-by to adopt the previous question, I shall have no objection. The moment there is, on the part of the minority in this body, any undue disposition to abuse the freedom of speech, or the freedom of debate, by indulgence in discussion in order to consume time, I shall be, as one of the committee, and as one of the members of this body very ready to adopt the most stringent rules to prevent such abuse. At a later period of this session it may be becoming to adopt such a rule. But there are other rules of great importance trenching upon debate, and which control it. In the first place, we may adopt the half hour or the quarter hour rule, or even limit the discussion to the space of five or ten minutes by-and-by. In the next place it will be discovered, as these rules are read, that they are of the most rigid and stringent character, and as they will be administered by the presiding officer of this body, it will be almost impossible to depart from those strict technicalities, which belong to the immediate subjects which are under consideration. Therefore, I hope at the present stage of this proceeding there will be an indisposition on the part of the majority to adopt this rigid rule. All parliamentary experience has shown this fact, that, whenever there is a disposition to abuse the freedom of speech, it is in the power of the presiding officer, or of any member of the body, to call the member to order, and to confine him strictly and technically to the subject under consideration. Now, sir, as I have said already, in the higher tribunals and deliberative bodies, no such question is known. Whenever in the Senate of the United States, whenever in the British Parliament, or whenever in the State Senate, there is a disposition to crowd the question under discussion, by discussing irrelevant matters, the majority of the body, either through the presiding officer, or any member, can call the member to order, and adopt a rule like this, for instance:—to take the question upon a certain hour of a certain day, or to limit the discussion to fifteen or twenty minutes, as the case may be. Sir, the great idea of a body of this kind, is the freedom of speech—freedom of deliberation; and, in order that we may arrive at wise conclusions upon subjects that may be discussed in this body, it seems at least, in this early period of the

session, it is better not to engraft upon our rules the order for the previous question.

Mr. SMITH—I offer the following resolution,—

The PRESIDENT—The Chair will announce that there is a pending question already with regard to this matter. It is the resolution of Mr. Sherman, which was offered yesterday.

Mr. E. BROOKS—I move as an amendment to strike out from the report all which refers to the previous question.

Mr. SMITH—That was the amendment I was about to offer.

The PRESIDENT—The Chair submits whether this amendment is hardly germane to the resolution from the gentleman from Oneida [Mr. Sherman].

Mr. E. BROOKS—I should desire then to present it in the form of a minority report to the resolution.

Mr. SHERMAN—I would suggest that we should first proceed with a consideration of the rules in the manner I suggested yesterday, and the gentleman from Richmond [Mr. E. Brooks,] can move his amendment when the rule is reached which relates to the previous question, and at the same time, the amendment of the gentleman from Fulton [Mr. Smith,] can be properly moved.

Mr. SMITH—There would be no objection is that, if it were not that the previous question to incorporated into several of these rules which would make it necessary to offer three or four, or half a dozen different amendments, whereas one amendment would cover the whole ground, and if satisfactory to the Convention, it would eliminate the previous question from the whole report.

Mr. GRAVES—Since the adjournment of the Convention yesterday, I have examined with some attention the rules adopted by the Convention of 1821. They are concise in their language, and practical in their operation, and I see no good reason why they could not be with propriety adopted for the control of the deliberations of this Convention. For that purpose I offer the following resolution, accompanying it with the proceedings of the Convention of 1821, from which the rules may be read if desired by this Convention.

The PRESIDENT—The Chair considers that the pending question is that of the gentleman from Oneida [Mr. Sherman] and he can only receive an amendment to that resolution.

Mr. RATHBUN—Is not the question whether the Convention will now proceed to consider the report of the Committee on rules?

The PRESIDENT—Yes, and the manner in which they are to be taken up.

Mr. RATHBUN—Then I suppose the only amendment is as to whether we will take up these rules and consider them.

The PRESIDENT—Does the gentleman from Richmond, [Mr. E. Brooks] offer any amendment, or does he offer a minority report?

Mr. E. BROOKS—Yes, sir; I offer it as a minority report, and therefore I move to strike out all in the report that refers to the previous question.

The PRESIDENT—The entry will be made upon the journal, that the gentleman from Richmond [Mr. E. Brooks] makes a minority report;

and the question now is upon adopting the majority report.

Mr. WEED—May I ask what that motion is?

The PRESIDENT—It is that the Convention now proceed to act upon this report by separate rules.

Mr. WEED—If this is not a divisible question, I think it should be. I ask that we may take the vote separately, first, upon taking up the rules, and then we may decide in what manner we shall consider them.

The PRESIDENT—The rules have already been read.

Mr. WEED—Are they properly then before this body?

The PRESIDENT—They are, and the simple question is, whether they shall be considered by separate rules, or as a whole.

Mr. ROGERS demanded the ayes and noes. Not a sufficient number seconding the call the ayes and noes were not ordered. The question was then put upon the resolution of the gentleman from Oneida, [Mr. Sherman,] as follows:

*Resolved*, That the rules be read separately, and that, except when a separate vote is demanded, or amendments made, they be considered adopted without a formal vote.

Which was adopted.

Mr. GREELEY—I would suggest that the Secretary read until he come to a rule to which somebody objects.

The Secretary then proceeded to read the first rule reported by the Committee and no objection being made thereto, it was declared adopted.

The Secretary then proceeded to read the second rule.

Mr. C. C. DWIGHT—I suggest that in the 4th subdivision of the second rule, the word "legislative" is inappropriate. I suppose our days are not "legislative" days.

The PRESIDENT—What amendment does the gentleman from Cayuga [Mr. C. C. Dwight] propose?

Mr. C. C. DWIGHT—I propose to strike out the word "legislative."

The question was then put on the amendment of Mr. C. C. Dwight, and it was declared lost.

The Secretary then proceeded to the Third Rule.

Mr. T. W. DWIGHT—I think there is an apparent conflict between the first sub-division and the third; one refers to the "communications from individuals and from public bodies," and the other to "communications from State officers." I would add to the first sub-division after "bodies" the words "other than those mentioned in the third sub-division of this rule."

Mr. SHERMAN—There is no objection to the adoption of the amendment that I can see, although it strikes me as surplusage.

Mr. T. W. DWIGHT—It seems to me, sir, that the words "State officers" includes individuals. The first sub-division says, "and communications from individuals;" the third sub-division says, "communications from State officers." There can be no doubt about it.

The question was then put on the amendment of Mr. T. W. Dwight, and it was declared lost.

Mr. ROBERTSON—I have two amendments to

propose. The first sentence of rule 3 is "The correction of any error that may be found to exist therein." I propose to strike out the words "that may be found to exist," and after "therein" insert "and insertion of omissions therefrom." As it reads now it seems as if it was only to correct misstatements in the journal, and not include anything that was omitted. The second amendment I offer is to strike out the words "messages from the Governor." With all due respect to himself and his office, I think this might be included under communications from State officers, as it would imply that there was some direct relation between us and the Governor, and it would be better not to insert "messages from the Governor" in these rules.

MR. SHERMAN—I do not see how an omission can be regarded as anything but an error; therefore, the first amendment seems to me entirely unnecessary. In regard to the order of business—"messages from the Governor," I will state such a case as this might occur: Communications from Conventions of other States might be addressed to the Governor, and he, would be the proper organ of communication with this body. I have no doubt in the sessions of the Convention many such cases will occur, and for that reason, I think, this order of business should be retained.

The question was then put on the amendments of Mr. Robertson, and they were declared to be lost.

Mr. OPDYKE—Mr. President, I move to amend the second subdivision of this section by substituting the word "communications" for "messages." It seems to me that the word "messages" implies an official relation between the governor and this body, which does not exist. I think the word "communications" more appropriate.

The question was then put on the amendment of Mr. Opdyke, and it was declared to be adopted.

The question was then put on the adoption of rule 3 as amended, and it was declared adopted.

The Secretary then proceeded to read rule 4.

There being no objection thereto, it was declared adopted.

The Secretary then proceeded to read rule 5, and it was declared by the President to be adopted.

The Secretary then read rule 6.

Mr. SHERMAN—"Or the" in the last line but one is a misprint. It should be "and."

The Secretary then proceeded to read rule 7.

Mr. BAKER offered the following amendment to the seventh rule:

"And such request shall not be withdrawn without the unanimous consent of the Convention."

The question was then put on the amendment of Mr. Baker, and it was declared lost.

Mr. FOLGER—I desire to ask the Chairman of the Committee on Rules, for what reason there is a change made in the time of members being privileged to ask for their excuse. Ordinarily, it is when the roll is being called, when their name is reached.

Mr. SHERMAN—The reason is, that if the request is made before the roll call is commenced it is likely to take much less time than if it were

made during the call of the roll. There will be, probably, fewer requests if made before the roll call. At that time many members might ask to be excused, while their names were being called, who would not do it previous to that time. This rule is in accordance with the practice which has prevailed for a number of years in the Assembly of this State, and that is the only recommendation for its adoption. My own personal choice would be to see it stricken out altogether.

Mr. ALVORD—I am not aware that the statement last made by the gentleman is correct. It is not so far as regards my own experience as presiding officer of the Assembly and as a member of it goes. I never had any other rule before me for my action, except that a person was entitled, on the call to give reasons for the excuse, if he should ask for it when his name was reached upon the roll call. For instance, if a person should be out when the roll call was commenced, and should stay but a moment, when he returns he would find himself under the rule announced, bound to vote. He would have no time to make his excuse; or his attention may be called to another direction upon the announcement of the roll call. It seems to me it will take no more time when the roll is being called, when the person's name is reached, to make the excuse than it would at any other time. I, therefore, move as an amendment to restore the rule as it is in the Assembly, by striking out the word "before."

Mr. DEVELIN—I would ask the Chairman of the Committee on Rules whether the time which a person might occupy to give an excuse was not limited by the Assembly rule. Under this rule a person might speak all day giving an excuse. Five minutes was the rule at the last session.

Mr. SHERMAN—There was in the Assembly rule a limit of five minutes, and we have provided for the same thing in a somewhat different way. This rule provides that he shall state concisely, without argument, his excuse. I do not see how any member can occupy a whole day in stating concisely, and without argument, his request to be excused from voting.

Mr. WEED—By rule 7 of the Assembly of last year, from which this is copied, a person could, when his name was called, ask to be excused and then state his reasons. I imagine that the committee upon rules omitted to state—perhaps they may have done so—the words that allowed him to make the explanation at the time his name was called, and with the permission of the Convention I will read the fore part of the rule, showing what words are out: "Any member requesting to be excused from voting, may make, when his name is called, or immediately after the roll shall have been called, and before the result shall be announced, a brief statement of the reasons for making such request, not exceeding five minutes." It seems to me that this rule should be limited to briefly stating the facts—stating the reasons. As long as he states facts and not arguments under this rule he may talk half of the day, if they are reasons why he asks to be excused. It seems to me the position taken by the gentleman from Onondaga [Mr. Alvord] is proper that a person

may ask to be excused when his name is called. In bodies of this size members may be careless, and before the roll call is commenced many members will not know what the question is and before their name is called they will have ascertained and may have reasons why they desire to be excused; and it is when their names are called in the roll that they should have the right, it seems to me, to briefly state their reasons for asking to be excused. I hope, therefore, the motion of the gentleman from Onondaga [Mr. Alvord] that the rule may be amended so as to be substantially the same as the 7th rule of Assembly of last year will prevail.

The Secretary then read the amendment of Mr. Alvord as follows:

"Strike out the words 'before the roll call shall be commenced,' and insert in lieu thereof the words 'when his name is called on the roll.'"

The question was then put on the amendment of Mr. Alvord, and it was declared to be adopted.

Mr. ALVORD offered the further additional amendment: add at the end thereof the following: "But he shall not use for such purpose more than five minutes of time."

Which was adopted.

Mr. SHERMAN—I think this rule may be still further improved by striking it out altogether. I make that motion.

Mr. GOULD—What will be the effect of that rule?—I should like to understand it? It is plain to me that a member cannot be excused from voting if this rule is stricken out. If this is so I hope it will not be stricken out.

Mr. ARCHER—The effect of striking out that rule will be to leave the rules as they were under the old parliamentary practice, by which every member was obliged to vote who was within the bar of the house when the question was stated by the Chair, unless he was personally interested in the result of the action. That has always been the rule so far as my acquaintance extends, until within a few years last past, and I have seen no good resulting from the adoption of this rule. On the contrary, I have seen much valuable time wasted in calling the roll and hearing excuses under this rule.

Mr. VEEDER—I would call the attention of the gentleman from Oneida [Mr. Sherman], who offers this motion to strike out the 7th rule, that that would be inconsistent with the provisions of the 6th rule, which provides that a member shall vote unless he be excused or be personally interested in the question. If there be power in the Convention to excuse a member from voting, there certainly should be some provision when he can make his excuse, and how much time he may be allowed to occupy in presenting that excuse.

Mr. SHERMAN—If my motion should be adopted it would be necessary to go back to the sixth rule and strike out the word "excuse" there.

Mr. LAPHAM—I offer the following amendment.

Mr. VEEDER—I understand the motion to be to strike out the rule. I do not think it is in order to make a motion to amend it.

The PRESIDENT—In the opinion of the Chair it takes precedence.



The Secretary then read the amendment of Mr. Lapham as follows:

"Any member requesting to be excused from voting, may make, when his name is called, or immediately after the roll shall have been called, and before the result shall have been announced, a brief statement of the reasons for making such request, not exceeding five minutes in time, and the question shall then be taken without debate, and such request shall not be withdrawn without the unanimous consent of the Convention."

Mr. TILDEN—It seems to me quite clear that the Assembly rule is much better than any of the amendments that have been proposed. It is simple, distinct, well-expressed and in conformity to all the recent practice of legislative bodies. I hope this amendment will be adopted.

The question was then put on the amendment of Mr. Lapham and it was declared carried.

Mr. GREELEY—I move this as a substitute, in accordance with the remarks of the gentleman from Wayne, [Mr. Archer] which impressed me as exceedingly forcible.

"No member present in the Convention when the yeas and nays are ordered on any question shall leave the house till he shall have voted, and no member so present shall be excused from voting, unless he be personally interested in the decision.

I think that is the right rule, that every member shall vote who is here; that he shall not run out and shall not be excused. It will save time and give us a full vote. I ask this to be substituted for the rule as it now stands.

Mr. E. A. BROWN—I ask for the experience of parliamentarians, if it be true as a principle of parliamentary law as stated by the gentleman from Wayne [Mr. Archer], that a legislative body has not the power, if a member asks to be excused from voting to exercise that power, and grant such excuse? It seems to me that it must be inherent in such a body as this, and any legislative body, to excuse for any cause any of its members from voting upon any question. And the object of such rule must be to limit debates that may arise during the call of the roll and the taking of the vote, and prevent debates upon that question of excuse by confining persons asking to be excused to a simple statement of the reasons upon which the request is based. So that if we have not that rule, if I am correct in my supposition, whenever a member asks to be excused, the debate is open to every member, and without limit any more than it is upon any other question; and the purpose of the rule must be, and the benefits growing out of it must be expected to limit such debate, and to restrict such discussion. I am in favor of substituting the Assembly rules.

Mr. CLINTON—Beyond the excuse of interest in the question pending before the Convention, I can imagine one case in which it would be contrary to my conscience to vote. I wish that liberty preserved. I wish that every vote which I, or any other member may give, shall be conscientiously given, and with a knowledge of what he is doing. Now, the substitute of the gentleman from Westchester, [Mr. Greeley] as I regard it, puts a man in this position: I have not heard a

debate. The question is new to me. I come in at the close of the debate. Then, under this substitute if it is adopted, I am asked to say under which King Benzonian—speak or die!—I am unwilling that any vote of mine—or vote of any gentleman here, should be dictated by mere leadership, or by any party considerations. I wish my vote to be intelligent; and if I have not heard an argument and do not understand the subject I will not vote, and the consequence must be, under the rule, that the sergeant-at-arms, I suppose, will take me into custody.

Mr. LOEW—I observe that a great portion of the substitute offered by the gentleman from Westchester [Mr. Greeley], is already incorporated in the sixth rule, "Every member who shall be within the bar of the Convention when a question shall be stated from the Chair, shall vote thereon unless he be excused or be personally interested in the question."

Mr. VAN CAMPEN offered the following amendment to the amendment offered by Mr. Greeley.

Insert after the word "voted" the following: "And that the doors and windows of the Chamber be closed by the Sergeant-at-Arms, and the members of the Convention be kept in close custody whenever the yeas and nays are ordered, and until the call of the roll be completed." [Laughter].

The question being put on the resolution of Mr. Van Campen, it was declared to be lost.

Mr. GREELEY—With very great respect for the gentleman from Erie [Mr. Clinton,] who has made the objection to this rule, it seems to me that he has proposed to make the neglect of one duty the justification for the neglect of another duty. We are here to listen to debates. This is a part of our duty. The gentleman says: "I have not heard the debate, and therefore, having refused or neglected to perform one duty, I ask that I may be allowed to neglect another." I think it is the duty of gentlemen to be here and to hear debates on the question. It is the old parliamentary rule, that gentlemen ought to vote, and I think that we ought to abide by it.

Mr. CLINTON—That may be true, yet there are a great variety of duties which are incumbent upon us. We are not merely here as members of the Convention; we have divers other relations. There are duties even superior to my duty to be present here to listen to whatever may fall from the gentleman from Westchester [Mr. Greeley], or any other gentleman who has the ability to enlighten me. I may have a friend who is sick; an accident may happen to my wife, or something may require me to be absent during the debate, and yet permit me to come in at the close of it. It does not follow that I contemplate any neglect of my duty.

Mr. HALE—I hope the amendment of the gentleman from Westchester [Mr. Greeley] will not prevail. I submit that it is in violation of that amendment of the Constitution of the United States, the existence of which the gentleman from Westchester is undoubtedly aware, which provides that neither slavery nor involuntary servitude, except as a punishment for crime, shall be permitted in this country. I do not propose



that any rule shall be adopted by which members of this Convention shall be held in involuntary servitude during the time the roll is being called.

Mr. FULLER—I rise to a question of order. The 6th rule has already been adopted in the Convention. The amendment of the gentleman from Westchester [Mr. Greeley] virtually repeals that rule, and that cannot be done except by reconsideration of the vote by which that rule was adopted.

The PRESIDENT—The point of order is well taken.

Mr. ROGERS—I ask if the previous question is in order on this last amendment?

The PRESIDENT—The previous question may be moved.

Mr. ROGERS—Then I move the previous question.

The PRESIDENT—On further consideration the chair is of the opinion that the motion of the gentleman from New York [Mr. Rogers] is hardly pertinent, in view of the present state of the question.

The question was put on the amendment of Mr. Greeley, and it was declared to be lost.

Mr. HITCHMAN moved to strike out the word "unanimous" in the 7th rule of the Assembly as adopted by the Convention. Which was carried.

Mr. SHERMAN—I withdraw my motion to strike out so that the question may be taken on the adoption of the rule direct.

The Secretary then read the rule as amended in words as follows :

"Any member requesting to be excused from voting, may make, when his name is called, or immediately after the roll shall have been called, and before the result shall be announced, a brief statement of the reasons for making such request, not exceeding five minutes in time, and the question shall then be taken without debate, and such request shall not be withdrawn without the consent of the Convention."

The question was then put on the adoption of the rule as amended, and it was declared adopted.

Mr. BERGEN—I move to insert the following as Rule 8, after Rule 7, in Chapter 3 :

"Rule 8. Every member shall be entitled at all times to enter within the bar of the Convention, except when otherwise provided by these rules."

Is the proposed amendment in order?

The PRESIDENT—It is.

Mr. BERGEN—The object of this amendment is to have the doors open in the morning while the Chaplain is making his prayer. I have seen members, and I myself have been stopped and not allowed to enter the Chamber because the Chaplain was engaged at prayers. I do not know that this body is any more pious than the Congress of the United States. Members of Congress are allowed to enter the hall while the Chaplain is engaged at prayer. I don't know that we are any more pious than people are in our churches, and I believe that all churches are allowed to remain open during prayers by the chaplain or parson—at any rate, I have never in my travels found a church door closed while prayers were going on. But here, I say, I have found the doors closed, and by whose authority I do not know. I have

found nothing in the rules authorizing it, and my object in offering this rule to be incorporated, is to prevent this practice of closing the doors against members. I may be in error, but I wish to put this matter to the test of the vote of the Convention.

The PRESIDENT—Does the gentleman propose to make this a distinct rule—the Chair so understands.

Mr. BERGEN—Yes sir.

Mr. LAPHAM—I rise to a question of order. The amendment proposed by the member from Kings [Mr. Bergen], does not relate to the conduct of persons or the government of this body. It refers to the duties of the Sergeant-at-Arms.

Mr. BERGEN—It refers to the privileges of members, and it is held to be one of the privileges of members to enter this hall unless excluded by the rules. The doors may be closed upon a call of the House, as it may be done here. But I hold it to be the privilege of a member to come in at any time unless excluded by the rules.

The PRESIDENT—The Chair is of the opinion that the point of order is not well taken.

Mr. SHERMAN—It strikes me that the rule as proposed by the gentleman from Kings [Mr. Bergen], is entirely unnecessary. Members have the right to enter the hall except during the call of the House, and no officer has a right to exclude them.

Mr. BERGEN—By what right then have I been excluded?

The PRESIDENT—The Chair can only say that it is not by its direction, and the Chair is informed that what has been done has been done according to custom by direction of the Clerk.

Mr. RATHBUN—I move that the amendment lie on the table.

The PRESIDENT—It is the opinion of the Chair that that would carry the whole subject with it.

Mr. RATHBUN—This proposes an independent rule, as the previous rules have been adopted, I submit that it is not in the power of the Convention to lay them on the table.

The PRESIDENT—The Chair will entertain the motion.

Mr. BERGEN—As I am informed that the doors are to be open during the hour of prayer that is all I desire, and if that is understood I am willing to withdraw the motion for the additional rule.

The Secretary then proceeded to read the 8th, 9th, 10th, 11th, 12th, 13th and 14th rules, and no objection being made thereto, they were declared adopted.

The Secretary then read the 15th rule.

Mr. SHERMAN—This is no part of the report of the Committee, and is not to be considered now, I think.

Mr. HARRIS—I hope the Convention will proceed to consider this now, as it has been inserted here as a portion of the rules, and not improperly, I think. Why not proceed to consider this portion of the rules now?

The PRESIDENT—The chair understands that it constitutes no part of the report of the committee, and it can only be considered by way of amendment.

Mr. SHERMAN—If it is the wish of the Convention to proceed and consider this matter now, I see no objection to it. I simply mentioned that it was no part of the report of the Committee, and not to be considered as such now.

Mr. TILDEN—It occurs to me there is a practical difficulty in considering this question at the present time. The report made by my friend from Albany [Mr. Harris] contains not merely the constitution of these several committees, but an order of reference to these committees. That is not contained in these rules, and could not well be, because it would not be appropriate, as my honorable friend will see if he will observe the first clause: "Standing Committees shall be appointed by the President to consider and report severally upon the following subjects, and such others as may be referred to them." The report which was made yesterday, provides that the several parts of the Constitution relating to these subjects shall be referred to these Committees, and I think it will be needful to amend this rule in order to effect that object. I suggest, therefore, that we better omit the consideration of this report at this time, and proceed with the rules.

The PRESIDENT—It will be omitted as a matter of course. It forms no part of the report, and only can come in by way of an amendment.

Mr. SILVESTER—In the report of the committee on rules yesterday, there were several committees that were named in that report.

The PRESIDENT—The Chair will inform the gentleman that there is no question before the Convention.

Mr. SILVESTER—I wish simply to inquire of the Chair, whether the committees that were reported by the Committee on Rules, and which were contained in their report, are now to be considered by the Convention or not. They reported four committees which are not in the report this morning—the Committee on Privileges and Elections, the Committee on Printing, the Committee on Contingent Expenses, and the Committee on Engrossment and Enrollment.

Mr. SHERMAN—There were reported by the Committee on Rules four business committees, which have been accidentally omitted in the printing. They will be found in document No. 2 which was laid before the Convention. They are—the Committee on privileges and elections; printing; contingent expenses, and engrossment and enrollment. These are the only committees reported by the committee on rules.

The Secretary then proceeded to read the 16th rule.

Mr. DEVELIN—May I inquire whether that refers to the report made by my friend from Albany (Mr. Harris), as it says all reports of committees?

The PRESIDENT—The Chair hardly thinks it does.

No objection being made to rule 16th, it was declared adopted.

The Secretary then proceeded to read the 17th and 18th rules, and no objection being made thereto, they were declared adopted.

The Secretary then read the 19th rule.

Mr. SMITH—I move to amend rule 19th by stri-

king out all after the word "except," and to substitute therefore the following:—"That the yeas and nays shall not be taken on a division." The object of that amendment is to get rid entirely of the "previous question" whenever it may be incorporated, or any allusion made to it in any one of the rules, and if the proposition be favorably received by the Convention, it will be only one of a series of motions to strike out, wherever the "previous question" occurs. I offer this amendment for the purpose of testing the sense of the Convention in regard to the necessity and propriety of the adoption by this body of the previous question, and from a conviction that it is not only unnecessary, but that it is unworthy the character and beneath the dignity of this body to adopt it. It is well known to members that that question has been entirely perverted from its original design and use, and has become simply an instrument for the suppression of debate. It was instituted originally by the British Parliament for the purpose of suppressing questions of a delicate character, which related to personages of high standing, and questions, the discussion of which might result in mischievous or unfortunate consequences, and when that question was put, a vote in the negative was always sought, and when that was obtained it suppressed the question, but to this day, in the British Parliament, it is not used for the purpose of suppressing debate. There are some instances in which that may be serviceable; it may be serviceable in cases where there are cliques or rings, who have certain schemes or measures which they want to press through a body, without ventilation or discussion. But Sir, there is no necessity for the rule in this body for that purpose, for it is to be presumed that no such cliques or rings exist here; and if there were such, they should neither receive aid from the rules, nor comfort from the body. It is sometimes perhaps necessary in legislative bodies, where there may be a factious minority, who seek to throw impediments in the way of legislation, but it is not necessary I apprehend in this body to provide for such a case as that; there is no such factious minority here. Some things have been said in regard to majorities, or to the majority and the minority and to parties. I confess, sir, that such language has fallen unpleasantly upon my ear; they have seemed like words of ill omen. For the purpose of revising the organic law of the State, there is in this body no majority and no minority; there are no parties here; we are all republicans, we are all democrats. We came here not for the purpose of framing an organic law for any party, or any sect, or any class, or any interest; but for the people of the State of New York in all their interests, vast and varied as they are, material and moral. I presume that none have come here with the view of influencing this body to do any such thing for a partizan purpose, and if they came with that view it would be the most consummate folly to attempt it, for in a country like ours, young, growing rapidly, and developing, where party issues and questions are changing and shifting like the sands of the shore, any should attempt to frame a constitution

for partizan purposes, they might find, in a few revolutions of the political wheel, that they had constructed or an instrument that might serve to crush them. It may be thought by some, that without the use of this question, debates may become tedious and prolix; I do not apprehend that; there are other rules, as has already been suggested by the gentleman from Richmond [Mr. E. Brooks], which will meet that difficulty. I, sir, came here for the purpose of discussion, and I do not wish to suppress it; I desire to hear all that may be said upon all the grave and important questions that will come before us; and for one, I desire to hear especially from those who may differ from me upon any question which may arise, I desire to have a full and free discussion, and to gather all the information and all the ideas I am able to, from all persons, not only from those within this body but from without; and I have been thankful to those gentlemen outside, who have taken so much interest in this Convention, as to present us with their views upon the questions that may here arise. I do not believe that any previous question will be necessary, and I believe it will be more compatible with the dignity and character of this body to entirely eliminate it from the rules of the Convention.

Mr. SPENCER—I move to postpone the further consideration of this rule until after the Convention shall have acted upon rule 29.

Mr. WEED—I suggest to the gentleman who made this motion, that the question may be taken as well here, whether there is to be a previous question incorporated in the rules, as at any other time. If the gentleman will cast his eye along the report he will see there are other rules that will have to be passed upon or postponed, until the 29th rule is discussed. If this body shall see fit to retain the previous question in this rule, then these others may be passed without any motion being made upon them. If they shall see fit to strike it out, then the other rules may be amended, as a matter of course, as we come to them.

Mr. HALE—It strikes me that the motion of the gentleman from Steuben [Mr. Spencer] should prevail, although the gentleman from Clinton [Mr. Weed] suggests that the question may as well be taken now, as to whether we shall have the previous question or not, still, as the previous question may be retained, if not in its present form, yet in a modified form, I think it would be the simpler way for us first to decide upon this important proposition, when we consider the rule which directly provides for the previous question. It strikes me that will be the simpler form of getting at it.

Mr. VEEDER—I think the consideration of this previous question should be postponed. The Convention will observe, if we should strike out this provision here, in regard to the previous question, and should still retain subsequently the right to move the previous question, then under that rule it would be the privilege of any member of the Convention to move the previous question in Committee of the Whole. If we strike it out here, still it may be retained as a part of the provision of the rule to move the previous question,

and then that rule will allow the previous question to be moved in Committee of the Whole, a provision which never has existed before. I therefore submit, we had better postpone the consideration of this rule now, because if it is retained we shall have to move to restore this provision.

Mr. SHERMAN—It strikes me the best mode of proceeding would be to pass over this rule informally, or to postpone it, and take it up when we come to the previous question in the 4th subdivision of rule 23.

Mr. SPENCER—I have no objection to that, and accept the suggestion of my friend.

No further amendments being made thereto rule 19 was declared to be adopted.

The Secretary then read rule 20, 21 and 22, and there being no objection made thereto, they were declared to be adopted.

Mr. SMITH offered the following amendment to strike out in the 4th sub-division the words "For the previous question."

Mr. AXTELL—I hope the provision will be retained. As to the remarks of the gentleman from Richmond [Mr. E. Brooks], as to what is becoming this body to do, the body itself must decide. If this body shall retain the previous question, it will be becoming, and it will be dignified also. The argument against retaining the previous question, as I understand it, is, that it is not in the rules of the Senate of this State and not in the rules of the Senate of the United States. I call the attention of the Convention to the fact that these are smaller bodies; but in bodies of this size the previous question will be found very convenient, and will contribute to the despatch of business. I know that the British House of Commons and Parliament has been cited as a body in which the previous question is not used for the suppression of debate, but the British House of Commons is not a model so far as the mode of conducting its debates is concerned; not having the previous question, it has altogether a more summary method of suppressing debate, by turning the House of Commons into a bear garden, or menagerie, or something of that kind. I submit that the previous question will contribute to the dignity of this body and will facilitate the despatch of business.

Mr. ARCHER—The majority of the Committee on Rules inserted the provision under consideration believing it was necessary, or that it might become necessary for the despatch of the business for which we are called together. In the Convention of 1846, when I first came here, I entertained the same opinion that has been expressed by some gentleman upon the floor, that the previous question was entirely unnecessary to any such body and would be improper; but the then majority inserted it and it was practiced before the Convention closed. I was obliged to yield and to admit to the friends who told me in the outset that I was wrong, that I was in error with regard to it, and I found that the practical workings of the rule were salutary. We can readily conceive that in a body as large as this, it may become absolutely necessary for us to limit debate. There is such a thing as exhausting a subject, and after all has been said that may be pertinently said upon a subject, it is due to our con-



stituents and to the people of the State that we shut down debate and come to a decision of the subject matter before us. It may be, sir, that without some such stringent rule as provided for in the report of the Committee, that a large number of gentlemen may wish to make speeches to go forth to the State after it is evident to the members of the Convention that not one word more can be said that will influence a vote. And it is for the reason that we thought it might be necessary that a majority, —I am not now speaking of political majorities, or of the majority of one party or the other—but I say, a majority of the members of this Convention having the appropriate business of this body directly in mind, should always have under its control the action of this body, and, therefore, I hope the amendment will not prevail.

Mr. LARREMORE—I have listened with a great deal of pleasure to the remarks of the gentleman from Wayne, [Mr. Archer,] and I certainly think there is a great distinction between limiting a debate and shutting it off altogether. If we come here to represent our constituents in a State Convention, it is certainly proper, and within the privileges of this house, that each individual member of it should have the right to give free expression to his opinion upon any question that may come before it. I hope therefore, the motion of the gentleman from Fulton [Mr. Smith] will prevail. This House has control of its own action, and if the privilege is at all abused we can at any time limit the time of the debate so that no member shall abuse his privileges. The gentleman has referred to political majorities. I am sorry he did so, because I have seen nothing in the action of this Convention to awaken any suspicions of that kind. And I think this will be the first act, if we adopt this question and incorporate the previous question into our rules,—It will be the first thing in my judgment looking towards partizanship in the deliberation of this body.

Mr. ARCHER—I beg leave to correct the gentleman from New York, [Mr. Larremore]. I distinctly stated that I had no reference to a political party or a political majority, but I had reference to the majority of the men, irrespective of party, on this floor who had distinctly in mind and first in heart the proper business which has called us together.

Mr. LARREMORE—I misunderstood the gentleman on that subject then.

Mr. S. TOWNSEND—I agree with my colleague [Mr. Archer] entirely upon his recollections upon this subject. I can very well remember when we were in the Convention of 1846, when it was adopted in the first instance, but little used and when finally we passed the fifteen minutes limitation rule I said that in all my previous legislative experience I had never seen the necessity of voting for the previous question, at any rate I had never seen the necessity existing to such a degree, as to require my vote. But in those bodies with which I have had the honor of being previously associated I found there was a certain and almost fixed ratio or number of floor members, I think in a body of 128 members, it was about 25 gentlemen who would have occasion at various

times, lengthily or otherwise, to occupy the attention of the House, and I know from the experience I had in that Convention, that constitutional conventions are in some respects peculiar bodies. I remember on one occasion in the Convention, that I predicted there was no member present of our body but was perfectly competent, and who would not prove himself so, to rise and address the chair at length or briefly, and at last toward the close of the Convention the joke went around as a gentleman would arise for the first time, "there is another one of your men," And I believe one very important question, of striking out a provision we had made, that we thought would be unanimously adopted, which was the constitutional provision, that no person should exercise a franchise who could not read the English language, was done in this way: It was stricken out at a very late period of the session by a gentleman who only spoke upon that occasion, but who spoke so effectively that it was negatived unanimously. And thus, from my experience in that Convention, I was induced for the first time in my public career to vote for the limitation of debate. I should prefer that for the present we should omit this matter of the previous question until we get along a little further, and then if we find it necessary at any time to restrict the debate, we can do so, and if necessary adopt the previous question.

Mr. E. BROOKS—I have a word or two to say, in addition to what I have already said upon this subject. I regret exceedingly in the formation of this Committee, that a division of the Committee became necessary, in the way it did (although it was perfectly fair and just on the part of the Chairman), yet the division became necessary, and there were three who were in favor of this proposition, and two who were in the minority, were opposed to it. I do not believe, as I have already said, that, at this stage of the session of this Convention, such a harsh measure as this, is necessary. I do not believe that, on the part of the minority of this body, it is necessary to make any such distinctions, or that there is any purpose or desire to abuse the privileges of debate, or to trespass upon the time of this body, or to do anything unbecoming the members of this Convention; nor do I believe there is any purpose on the part of the so-called majority, so to control or regulate, or to infringe upon the rights of debate, as to oppress the minority. But I can conceive, as every gentleman of legislative experience must conceive, of a certain state of proceedings, where the previous question will operate very greatly to the public disadvantage. The effect of it is not merely to cut off debate, but to cut off amendments and propositions of the most important character, which any gentleman may be ready to submit, and which it will be impossible to submit under a previous question. It is not, therefore, merely in its effect to curtail debate, but to prevent it, and to cut off all such deliberate and enlightened propositions as may be in the possession of the members of the Convention themselves. Therefore I hope, Mr. President, that, at this stage of the proceedings, it will not be deemed necessary to adopt this harsh and stringent rule. It is very true, as has been said, there is no pre

vious question in the British Parliament, and the British House of Commons has been characterized by one gentleman on the other side of the House as a sort of bear garden; but, sir, with all respect to the deliberations of the Senate of the United States of America, and with all proper disrespect to the debates upon the other side of the Atlantic, let me say that a subject in the British House of Commons is as thoroughly and intelligibly discussed as in any deliberative body in the world. It is not a question of mere forensic eloquence, not a question where speeches are made for home consumption and for Buncombe, but where members address themselves, as they ought to address themselves in a body like this, directly to the subject under consideration. The previous question had its origin in Great Britain over 250 years ago. It never was intended to abridge debate. But after it had been in operation for over 150 years, then it was that it was improved and used, as has been expressed by Mr. Jefferson and others, in order to prevent injurious and personal discussion. Let me very briefly read what Mr. Jefferson says upon this subject: "A proper occasion for the previous question, is when a subject is brought forward of a delicate nature, as to high personages, &c., the discussion of which may call for observations which may lead to injurious consequences." This was the original previous question, but the previous question in our day and time, in public bodies like the Assembly and like the House of Representatives in Washington, is to cut off important debate, and, as I have said already, here there are various substitutes for that; such as to put the question upon a certain day named, and upon an hour named in that day; or such as postponing the question, if need be, and where the presiding officer will limit the discussion to the precise and technical object which is under consideration; or such as laying it upon the table, which cuts off all debate. Now, sir, when the presiding officer of this body holds a member to his strict performance of what properly is under discussion, there can be no great abuse of the question. Certainly, in a body like this, before we have been ten days in session, and where the rules of the body are always under the control of the body itself, it is not, in my judgment, necessary to adopt this measure. As I have said, Sir, if at a later period of the session, it becomes necessary to introduce this measure, growing out of any abuse in debate, I will not oppose it, and I do not believe that any large number of the Convention will.

Mr. CURTIS—The previous question, Mr. President, has been retained in some form in almost every deliberative assembly, but there seems unquestionably to be some feeling upon this subject, in our revising these rules, on the part of the Convention. The gentleman who preceded me has most truly remarked, that it is a matter in which we are to be instructed by experience, and it seems to me that at the present stage of the discussion it must be evident to the Convention that it will be wiser, for the present, not to insist upon the previous question, for the reason that when the dog days set in and we shall wax more eloquent and more lengthy in our speeches, we may then find, as the gentleman from Richmond [Mr. E. Brooks] has

suggested, that it may be necessary to impose the previous question in the interests of the people of the State. I hope, therefore, since my friend from Fulton [Mr. Smith] has described this body as one peculiarly fit to exercise this power, and as a body not of designing men, and not being of any political complexion, but as a body rather of sense than otherwise, in whose hands the power may fairly belong, I trust that the previous question will now at least be passed over until a later period.

Mr. HARRIS—The gentleman from Richmond who has just taken his seat has said, and said it much better than I could have done, what it was my purpose to say. I have never been very friendly to the previous question, and yet it has come to be almost a common law in large bodies like this. I think it was fit and commendable in the committee on rules to present that rule for the consideration of this body, and I concur in the views which have been suggested by the gentleman from Fulton [Mr. Smith], and by the gentleman from Richmond [Mr. E. Brooks], that it would be unwise now, to adopt the previous question in this body. I believe we shall get along very well and comfortably without it. A body constituted as this, I am persuaded, will not encroach at any time upon the liberty of debate, and if we should find hereafter, that it is necessary to cut short debate, we can adopt this rule, or what will be better, we can occasionally fix a limit to the debate, or to the time when the question shall be taken by the Convention, I hope, therefore, we shall not now adopt the previous question as a part of our rules.

Mr. DALY—There is a reason, Mr. President, which applies in the adoption of the previous question in legislative bodies, which does not apply in a body like this. A legislature has a large amount of business before it—a great number of bills to pass in the course of the session, and there are a great many conflicting interests in reference to the measures to be passed upon. And the previous question, as a power in the hands of such bodies, becomes a necessity for the despatch of public business. The business we have to do is comparatively small, and it will not, after it is finished, embrace much more than an ordinary act of the legislature. It requires great deliberation; it requires much discussion, and, I think, it is the experience of every person who has examined the debates of public bodies in this country, although there may be much irrelevant and much discursive matter, yet they have the quality which distinguishes them above the debates of the British Parliament and of nearly every other public body, that every possible view of the question is examined.

We are here to make a fundamental law of the State; the provisions are comparatively few. They will be carefully considered in committee before they will be submitted to us, and it is proper that the greatest latitude of debate should be allowed before they are passed upon. I sympathize most sincerely with the remarks of the gentleman on the other side of the House, with regard to the motives that actuate this body. I have hitherto been a silent spectator of it, and I have witnessed with great gratification the sincere



and earnest disposition evinced upon the part of what may be called a majority of this House, to do justice to the minority. It was marked in the first important measure of the President himself; it has been marked by the character of the debate throughout. It is perhaps very unfortunate that our proceedings were opened with a reference to political partialities, prejudices and powers, and it is happy that it has not been followed up. There certainly was no ground for complaint, in my judgment, involved in the complaint made originally, and I might add, perhaps, that there was as little cause for the defense offered to that complaint. I am quite satisfied that I but echo the sentiments of a large number of gentlemen who act with me, in what is called the minority, when I say I am quite satisfied with the fairness and impartiality and disinterestedness that has distinguished this Convention, and which I am satisfied will mark its deliberations throughout. I have been very justly said, Mr. Chairman, if it should ever be necessary for the despatch of public business to apply the previous question, it will be in our power to do so. I therefore, most earnestly hope it will not be made use of at this period. There is not that occasion for imprudent legislation, for haste, or for any of those consequences which are arrested by a resort to the previous question, in a body of this nature, that would be required in a legislative body.

Mr. STRONG—If I was under the impression that the action of this Convention would be a partisan one, I should be very much in favor of striking out this provision, but I have better hopes; and from what has taken place in this Convention, I believe myself that each member will vote for any proposition according to the best of his understanding and without any reference to previous party considerations. I came here at any rate, with a view to support any measure, let it come from what source it may, which I believe to be a proper one and one which if adopted would be for the best interests of this people, and I intend to pursue that course. But if there is any proper way in which it can be done, I am very much in favor of having some power in the Convention to stop debate; if not, it may be interminable. I do not believe, however, there will be any attempt made to stop debate upon party consideration; and if so, that could be prevented if we adopt an amendment providing that the previous question shall not be sustained except upon a vote of two-thirds of the delegates present. If that is done, it would, undoubtedly, effectually prevent any party action. I beg leave to make one or two remarks, with regard to the action of the Democratic party in calling this Convention, and what I suppose will be its action hereafter. It is true, undoubtedly, that there was a considerable portion of the Democratic party who opposed the calling of this Convention, and it may be that the gentleman from Westchester [Mr. Greeley] is right, that if there had been a majority of democrats in the Assembly and Senate, the law would not have passed. But it was not because the Democratic party, or any considerable portion of it, was opposed to amending the Constitution; they have always been in favor of that, or at least a very large

portion of them, and I have no doubt if they could have been relieved from some apprehensions they had at the time, they would have been as zealous to have this convention called, as perhaps any of the opposite party. The great apprehension of the Democratic party was, that if the convention was called it would go too far; that it would take extreme measures. And they had another apprehension, too, I acknowledge, and that was, that party considerations might have an influence upon the views of members in this convention; but when I came here, I came with the expectation that in that they were mistaken. It is true the Republican party have had a caucus and have selected the officers of the convention. That was to be expected, sir, and I do not blame them for that. It is the rule, I believe, in every body constituted as this is, and in every legislative body, that the majority should control in the selection of the officers. Against that I had no complaint, and I was very well satisfied with the selection they made and very cheerfully voted for the officers which were selected by that caucus.

But there was a resolution adopted, after they had made the nomination of officers, which looked a little toward party action, and to that I was opposed—there was a resolution calling for other caucuses of the Republican party. There could be no object to be accomplished by that, except it was to act upon public measures, because they had already made the selection of officers and there was nothing further to do with regard to that. If caucuses are to be called again, it must necessarily be with a view of controlling the party in voting for some particular measures. I trust, however, that the very honorable gentleman who was Chairman of that meeting and one of the Committee of that caucus, will not find it necessary to call a caucus with a view of considering any such measures. But if he is prevailed upon by pressure from others, or thinks proper to call them, and the idea becomes general that the caucus dictation is to control the action of this Convention, it will seriously jeopardize anything we may do. If there is an impression among the people that the gentlemen of this Convention are acting for the benefit of a particular party rather than for the public benefit of the people of the State, then my impression is that anything that may be adopted here will be rejected. I am rather inclined to move that if the previous question is to control in any case, it shall be by a two-thirds vote; and I would make that motion.

Mr. M. I. TOWNSEND—As I am the person who had the honor in the Republican caucus to move that the officers of the meeting be authorized to call future Conventions, perhaps a word is due from myself in answer to the gentleman from Suffolk [Mr. Strong]; and let me say that I made that motion with no reference to the idea that it was possible for the Republican caucus, or any other caucus, to control my vote upon a measure to be adopted by this Convention. I don't so construe the duty of a member of this Convention. I believe it is the duty of every member in voting upon measures here to act according to the dictates of his own conscience, and it was with that reason I desired that Delegates representing Senatorial districts should not sit together. I do

sire that every man should act upon his individual judgment. So much in answer to the suggestion made by the gentleman from Suffolk [Mr. Strong]. I am myself, to some degree, inexperienced in official public bodies although somewhat conversant with the action of bodies unofficial; but to my appreciation, there is nothing that this Convention more needs than discussion—than debate. We are living under one of the best Constitutions that God ever gave to man for his government. We have come together to see what changes shall be made in that Constitution. We have come together when the people of this State have, to no very great degree, marked out the form of any changes that shall be made in the Constitution. They have sent us here rather to find out what changes should be made, and in what order, and in what form those changes should be put, and for the purpose of making such changes, we need the views of every man elected to this body, and I would not stifle the expression of any man's views who has the honor of a seat upon this floor. It is to be presumed that every man who has been sent here has come here with the confidence of a portion of the people of this State, and if he desires to express the opinion that he entertains, for anything that I now know, I would give the fullest freedom to the expression of his sentiments. I believe that every gentleman who has come here has been a member of either one or the other of the great political parties of this State, and so far as we are members of these parties, my belief is that no great differences of opinion will prevail in respect to the instructive nature of the statements made. I expect as much benefit from the expression of views of gentlemen who have acted with the Democratic party heretofore, as from gentlemen who have acted with the Republican party. It is not the Democratic party that I fear in this Convention—what is to be feared is hasty action—action not sufficiently considerate, whether it come from one party or the other, and if there is any way to avoid hasty and inconsiderate action I hope it may be adopted.

The PRESIDENT then stated that the pending question was on the amendment of Mr. Strong, which provided that the previous question should not be ordered, except on a two-thirds vote.

Mr. HITCHMAN—I wish to say a word which I think will relieve this whole matter of any embarrassment. The gentleman from Kings holds an amendment which will cover the difficulty.

THE PRESIDENT—The amendment suggested by the gentleman, not having been offered, the Chair cannot take cognizance of it.

Mr. STRONG—The purpose of my amendment is, that a motion for the previous question cannot be sustained except upon a vote of two-thirds of those present and voting.

Mr. ROGERS—On that I call for the ayes and noes.

Mr. SHERMAN—I would suggest to the gentleman from Suffolk [Mr. Strong] that the proper place for his amendment would be under Rule 29. It comes in rather awkwardly at this point.

Mr. ROGERS—On that, Mr. President, I call for the ayes and noes.

Not a sufficient number of members seconding the call, the ayes and noes were not ordered.

Mr. FERRY—I am compelled, Mr. President, to ask what is the pending question?

The PRESIDENT—The question pending before the Convention is the amendment of the gentleman from Suffolk [Mr. Strong] to so amend the rule that it shall provide that the previous question shall not be sustained except upon a vote of two-thirds of the delegates present and voting.

Mr. HARRIS—I hope that the amendment will not be adopted. I hope, if we are to have the previous question, we shall have it in the ordinary way, and it may be adopted by the majority; but I am against the previous question, and hope that we shall not have it at all. It will be as much of a tyranny for two-thirds to shut off the right of discussion to one-third, as if one-half should shut it off from the other half. I hope the amendment will not prevail.

Mr. DEVELIN—Mr. President: I think, upon the reading of the first part of the proposed rule, the amendment proposed by the gentleman from Suffolk will be found to be entirely incongruous.

The PRESIDENT—The Chair does not understand that there is any incongruity.

Mr. DEVELIN—That rule provides for the order of motions.

Mr. SHERMAN—Before the vote is taken, I wish to make a remark having some practical bearing on this subject. It has been stated in this debate that a sufficient substitute for the previous question might be found in bringing the debate to a close at a certain hour. The difficulty is, that a motion of that kind is not a privileged question, and could not be sustained, except by a unanimous vote.

Mr. E. BROOKS—The answer to that is that we are about to adopt a rule by which we can change any rule upon one day's notice.

Mr. SHERMAN—Yes, by the consent of a majority of all the members.

Mr. DEVELIN—Will the President instruct the Secretary to read the entire rule as printed with the heading?

The Secretary proceeded to read the rule as requested.

The PRESIDENT—Will the gentleman from Suffolk send his amendment up in writing?

Mr. ROBERTSON—It is very evident that this amendment, if adopted at all, should be inserted in rule 29, as rule 23 is a mere sketching of the order of proceedings of the convention. I therefore propose, if in order, that we postpone the consideration of rule 23 until after the consideration of rule 29.

Mr. POND—I would suggest that the amendment would properly come in as an amendment to rule 24, and more properly than to rule 29. Rule 24 is this: "Every motion or resolution to adjourn for the day, for the previous question, and to lay on the table, shall be decided without amendment or debate. After that it may be inserted that the previous question shall not be adopted without a vote of two-thirds of those present and voting."

The PRESIDENT—The question will be taken on the motion of the gentleman from New York [Mr. Robertson], as amended by the gentleman from Saratoga [Mr. Pond].

Mr. VEEDER—I do not understand that a motion to postpone is amendable.

The **PRESIDENT**—A motion to postpone to a definite period—say until after the consideration of Rule 29—is amendable in the opinion of the Chair.

**Mr. TILDEN**—The only proper place in which to consider any motion to regulate the previous question is under Rule 29. That is substantively the provision in respect to this matter, and whether it be decided by the Convention to strike out the Rule, or to retain it in some modified form, or in some regular form, that is the proper place for the consideration of the question. The 24th Rule, as well as the 23d, is a mere regulation of the order of priority in which certain business shall be done, and it does not touch the substance of the question now under discussion. I, therefore, have thought my friend from New York, [Mr. Robertson.] quite right in moving to postpone the consideration of Rule 23, and then when we reach Rule 24 that that should be postponed until the whole matter may come up regularly in the consideration of Rule 29. When we come to consider that, my venerable and excellent friend from Suffolk [Mr. Strong], may propose his amendment regularly as to the mode in which the previous question can be seconded. It will then be for the Convention to decide between the propositions now being debated before it—the one whether the previous question shall be retained, requiring a larger vote than a majority to order it, or the other, whether we shall defer the previous question altogether until experience shall have developed some necessity for its existence. For myself, I do not feel much solicitude as to which course shall be taken. I have no recollection that, in the Convention of 1846, although we had the previous question, we had occasion to resort to it, and certainly, if at all, very rarely. But, inasmuch as there is a facility to amend these rules, almost extreme in its character, I am almost inclined to agree with the gentleman from Albany [Mr. Harris] and with the gentleman from Queens [Mr. S. Townsend] in thinking that we might as well leave the question whether or not we shall have the previous question, to be determined by future experience. If it were the proposition to commit ourselves finally and absolutely to the conclusion that we would not vote in any instance to have the previous question, I should be inclined to a different opinion.

**Mr. MERRITT**—For the purpose of saving time I think we had better consider Rule 29, and I ask unanimous consent that we now proceed to its consideration.

**Mr. ROGERS**—I would like to know, Mr. President, what Rule 29 is?

The Secretary proceeded to read Rule 29 as reported by the Committee.

**Mr. ROGERS**—I object.

The **PRESIDENT**—Objection being made the question will recur on the motion of the gentleman from Saratoga [Mr. Pond] to amend the motion of the gentleman from New York [Mr. Robertson] that the consideration of Rule 23 be postponed until after the consideration of Rule 24.

The question was put on the motion of Mr. Pond, and it was declared carried.

Rule 24, as reported by the Committee was then read by the Secretary.

**Mr. SMITH** moved to amend by striking out the words "or the previous question."

**Mr. SPENCER** moved to postpone the consideration of Rule 24 until after the Convention should have considered Rule 29, which was carried.

Rules 25 and 26 as reported were read by the Secretary, and there being no objection thereto, they were declared adopted.

Rule 28 was then read by the Secretary.

**Mr. STRONG**—I move that the following words be stricken out of the rule as read. "Nor unless moved by one who shall have voted in the majority." I am aware that a rule of this kind has existed in Congress for a number of years, and has also existed in the House of Assembly. I have felt by experience the inconvenience of that rule in Congress during two sessions of that body. I have found that persons who were opposed to the action of the majority have nevertheless voted with the majority against their conscientious convictions, for the purpose of being able to move a reconsideration. It seems to me that a motion for a reconsideration should be made by any delegate in the Convention, and that it is the privilege belonging to each delegate which should be exercised by one in the minority as well as one in the majority. I have never discovered any instance in any body to which I have belonged where a member could not be prevailed upon to vote against his opinion, and pretty generally there has been an ability to persuade some one in the majority to vote to move for a reconsideration. I think we had better reserve the privilege to each delegate to the Convention than to have the same thing accomplished by indirect action.

The question was put on the amendment of Mr. Strong, and it was declared carried by a vote of 63 ayes to 56 noes.

**Mr. WEED**—I move to further amend by inserting after the word "day," in the third line, the words "on which a session of this Convention shall be held." As the section now reads, under the construction given in this State to a legislative day, a motion made on Saturday can not be reconsidered on Monday. When the word was originally incorporated in the rule it was intended to cover a day upon which the Legislature had a session. But some few years ago the Attorney-General of this State decided that the Sabbath day was a legislative day, because the Legislature in session had a right to sit upon that day, and as will be readily seen, the use of the word originally in the rule, has been so changed that a motion or action of this House on Saturday cannot be reconsidered on Monday if this rule were strictly enforced, because the motion to reconsider was not made on the next preceding legislative day, which was Sunday. I desire to call the attention of every member of this Convention to the object of the rule, it being that at the next session of this Convention, a motion may be made to reconsider any error or inaccuracy in the action of the Convention.

**Mr. TILDEN**—This rule is doubtless well adapted to the House of Assembly, where there are a great many questions of very great importance to be acted upon. But in a great body of this kind, where there are comparatively few questions,



and where it is expedient to allow the widest latitude for discussion and consideration, where there is not sitting another body to be a check upon its proceedings, and where there does exist no veto power on the part of the executive, it is worthy of consideration whether a more liberal rule with regard to the question of reconsideration of our action, should not prevail. In my judgment, the chief danger to be apprehended here will be that we may pass upon questions of grave importance to our constituents, too hastily, too rapidly, with too little consideration. In the Convention of 1846, the rule that prevailed was as follows:

"A motion for reconsideration shall be in order at any time, and may be moved by any member of the Convention, but the question shall not be taken on the motion to reconsider, on the same day on which the decision proposed to be reconsidered shall take place, unless by unanimous consent; and a motion to reconsider being once put and lost, shall not be renewed, nor shall any subject be a second time reconsidered without the consent of the Convention. If the motion to reconsider shall not be made on the same day or the day after that on which the decision proposed to be reconsidered was made, three days' notice of the intention to make the motion shall be given."

You will perceive sir, and the Convention will perceive that this rule is in favor of reconsideration by a single body exercising far greater powers, and acting on fewer subjects than is common with legislative bodies. This subject has attracted my attention so hastily that I have not had much opportunity to consider it, but I am inclined to a more liberal rule on this subject, and for the purpose of bringing it before the attention of the Convention, I will move it as a substitute for the rule I have read for rule 28 now under consideration.

Mr. WEED—For the purpose of bringing the substitute squarely before this body, I withdraw my amendment.

The question was then put on the motion for the substitute of Mr. Tilden, and it was declared carried.

The question then recurred on the 28th rule as amended by the substitution of the rule offered by Mr. Tilden, and it was declared adopted.

The SECRETARY then read the 29th rule.

Mr. GERRY offered the following substitute:

"The Convention may at any time, by a vote of a majority of all its members present and voting, limit the time which its members shall respectively occupy in the discussion of any motion or resolution, and the resolution to limit the time of debate, shall be deemed a privileged motion, and shall be decided without amendment or debate."

The question was put on the amendment of Mr. Gerry, and it was declared lost.

Mr. BICKFORD moved to strike out Rule 29 entirely.

Mr. FLAGLER—I would ask the ayes and noes on the question, as I desire to be on the record against it. I think this debate demonstrates the necessity of having the previous question in this body.

A sufficient number seconding the call for the ayes and noes, they were ordered.

Mr. MERRITT—I do not desire to detain gentlemen with any extended remarks; but it seems to have been conceded by the opponents of the previous question that a contingency may arise where it may be necessary. It has also been admitted by a member of the convention of 1846, the eminent gentleman before me [Mr. Tilden] that in that convention its exercise was not necessary. With the spirit prevailing in this convention, I think there is no danger growing out of its incorporation in the rules. Whenever the time for its exercise shall come, it is proper that we should have the power to exercise it. When I say "we" I mean the majority upon any question which comes up; and I do not speak of it in any party sense at all. I am therefore in favor of the adoption of this rule as it now stands, and I may be allowed to express the hope that there will never be any occasion for its exercise.

Mr. STRONG—I believe that the previous vote was, that the amendment which I offered to the 4th sub-division of the rule should be laid over until this time. I move that there be now inserted, immediately after the word "affirmative," on the 2d line of rule 29, the words "by the vote of two-thirds of the members present and voting."

Mr. BICKFORD—I will merely say that my object in moving to strike out the 29th rule is twofold. First, That we may, if we desire, insert some other rule in its place, this being cleared away; and, in the second place, that we may for the present attempt to get along without the previous question, having power at any time we wish, to adopt it, if we find it necessary for the dispatch of business. I suppose the whole of this rule may be spared.

The question was then taken on the motion of Mr. Bickford to strike out the 29th rule, and the motion was declared carried by the following vote:

**Ayes**—Messrs. Barto, Beadle, Beals, Beckwith, Bell, Bickford, Brooks, A. E. Brown, Burrill, Case, Cassidy, Champlain, Cheritree, Chesebro, Church, Clinton, Collahan, Comstock, Conger, Cooke, Corbett, Corning, Curtis, Daly, Develin, C. C. Dwight, Eddy, Ely, Endress, Ferry, Fowler, Garvin, Gould, Graves, Gross, Hale, Hardenburgh, Harris, Hatch, Hitchman, Hutchins, Kernan, Kinney, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Masten, Mattice, Merwin, Miller, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, C. E. Parker, President, Prosser, Reynolds, Robertson, Roy, Rogers, L. W. Russell, Schell, Schoonmaker, Seymour, Silvester, Smith, Spencer, Tappen, Tilden, M. I. Townsend, S. Townsend, Veeder, Wakeman, Wales, Weed, Wickham, Young—85.

**Noes**—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Bergen, E. P. Brooks, Carpenter, Duganne, T. W. Dwight, Farnum, Field, Flagler, Folger, Frank, Fuller, Gerry, Greeley, Hadley, Hammond, Hitchcock, Houston, Huntington, Jarvis, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Ludington, McDonald, Merrill, Merritt, Pond, Prindle, Rathbun, Rolfe, Root, Rumsey, Seaver, Sheldon, Sherman, Stratton, Strong, Tucker, Van Cott, Williams.—53.

Mr. SHERMAN moved the following as a substitute for rule 19.

**Rule 19.** The same rule shall be observed in Committee of the Whole, as in the Convention, as far as applicable, except that the yeas and nays shall not be taken on a division.

The question was put on the motion of Mr. Sherman and it was declared carried.

The question then recurred on the motion of Mr. Smith, to strike out sub-division 4 of Rule 23; which was carried.

Mr. COOKE moved to strike out the words "or the previous question."

Mr. SMITH—There is a motion pending to that effect. I offered such a motion myself.

Mr. COOKE—Then I withdraw the motion.

The question was then put on the motion of Mr. Smith to strike out the words "for the previous question," in rule 24, and it was declared carried.

The SECRETARY then proceeded to read rule 30.

Mr. WEED—I would suggest that rules 19, 23 and 24, having been amended, should be adopted by the Convention.

The PRESIDENT—If there is no objection they will be considered as adopted.

Mr. FIELD—I move the following amendment to rule 24.

The PRESIDENT—Rule 24 having been adopted, it is hardly in order to move to adopt it.

Mr. FIELD—The motion was not put.

The PRESIDENT—The Chair hearing no objection to the adoption of the rules, they were considered to be adopted.

Mr. FIELD moved a reconsideration of the decision adopting Rule 24.

Which was lost.

The Secretary then read Rules 30, 31 and 32, and there being no objections thereto they were declared adopted.

The SECRETARY then proceeded to read Rule 33.

Mr. SILVESTER offered the following amendment.

Add as the 8th sub-division the following:

"Such person or persons as any member of the Convention may invite, but such privilege shall cease whenever the sofas upon the floor are filled."

Mr. FIELD offered the following amendment to the amendment offered by Mr. Silvester:

"The President may daily issue cards of admission to not more than twenty persons, who shall be entitled to admission within the bar during that day."

Which was lost.

Mr. POND—The Convention adopted a motion the other day extending the privileges of the floor to the Judges of the Court of Appeals. I propose to add to subdivision 8, "the Judges of the Court of Appeals."

Mr. T. W. DWIGHT—I would move to amend the amendment by adding the ex-Judges of the Court of Appeals.

Mr. POND—I accept the amendment.

The question was put on the amendment offered by Mr. Pond, and it was declared adopted.

Mr. LARREMORE—A motion was adopted on the first day's session, extending the privileges of the floor to the members of the two former Constitutional Conventions of this State. I would

move that they be included in the subdivision of the rule.

The question was put on the motion of Mr. Larremore, and it was declared carried.

Mr. RUMSEY offered the following amendment: Insert at the end of subdivision 7 of rule 33, the words: "By name on a special vote."

Mr. RUMSEY—My object in offering the amendment is this. Congress has returned thanks, by a general vote, to the officers of the army, and without that amendment, all officers of the army would be entitled to the privileges of the floor.

The question was put on the amendment of Mr. Rumsey, and it was declared carried.

The question was then put on the amendment offered by Mr. Silvester as subdivision 8, relative to persons entitled to the privileges of the floor, and it was declared lost.

The question then recurred on the rule as amended by adding subdivision 8, providing for the admission of Judges and ex-Judges of the Court of Appeals, and members of the two former Constitutional Conventions of this State, to the privileges of this floor, and it was declared adopted.

The question then recurred on the adoption of the rule as amended on motion of Mr. Rumsey, by adding at the end of subdivision 7 the words, "by name on a special vote," and it was declared to be adopted.

Mr. SILVESTER offered the following amendment, add as subdivision 9 of Rule 33, the following:

"Ladies; but the privilege of ladies to such admission to cease whenever the sofas upon the floor are filled."

The question was put, on the amendment of Mr. Silvester, and it was declared to be lost.

The question was then put on the adoption of rule 33, as amended, and it was declared adopted.

The President announced the reception of the following communication from the Comptroller:

STATE OF NEW YORK, COMPTROLLER'S OFFICE, }  
Albany, June 12, 1867. }

Hon. WILLIAM A. WHEELER, *President of the Constitutional Convention.*

SIR: I have the honor to acknowledge the receipt of a Resolution of the Convention, adopted on the 11th inst., addressed to the Commissioners of the Canal Fund, and to state in reply, that it will be submitted for their consideration at the earliest day on which the Board can be convened.

Very respectfully yours,

THOMAS HILLHOUSE,  
*Comptroller.*

Which was ordered to lie on the table and be printed.

Mr. WEED—I ask for an indefinite leave of absence for Mr. Pierrepont. At his request I state as a reason that he was engaged as counsel in the Surratt trial in Washington prior to his nomination to this Convention. He supposed that the trial would take place prior to the holding of the Convention, but it was adjourned until now.

No objection being offered the leave of absence was granted.



Mr. M. I. TOWNSEND moved that the Convention do now adjourn. Which was lost.

Mr. BERGEN moved that the Convention take a recess until four o'clock, which was lost.

Mr. POND—It seems to me that by unanimous consent the balance of this report may be adopted. The committee were unanimous on every part of it except that which refers to the previous question.

Mr. FOLGER—I object.

The SECRETARY then proceeded to read rules 34 and 35, and there being no objection thereto they were adopted.

The SECRETARY then proceeded to read rule 36.

Mr. MORRIS offered the following amendment: Substitute for the words "one-fifth" the word "thirty."

Mr. FIELD moved to amend the amendment by substituting in place of the word "thirty" the word "fifteen."

Which was carried.

The question then recurred on the adoption of Rule 36 as amended and it was declared adopted.

The SECRETARY then proceeded to read rule 37.

Mr. FIELD moved to amend by striking out the words "within two days," and inserting in lieu thereof the words "next day."

Mr. WEED—I have no objection to the amendment offered by the gentleman from Orleans, [Mr. Field], as I should like to have the journal put on our files on the second day, but if we get them on in six days under this rule it will be more promptly than I have ever known it to be done.

The question was then put on the amendment of Mr. Field, and it was declared to be adopted.

The question then recurred on the adoption of Rule 37 as amended, and it was declared adopted.

The SECRETARY then proceeded to read rule 38, and there being no objection it was declared adopted.

The SECRETARY then proceeded to read rule 39.

Mr. CONGER—I would like to ask the chairman of the Committee on Rules whether he has examined the question, how far, under the law constituting this convention, we are authorized to pass any such resolution as this, or adopt any such rule.

Mr. SHERMAN—The language of the law as I remember it, is that the Comptroller shall furnish to the convention such file-boards, stationery and other like articles as are furnished for the use of the legislature. Among other articles furnished for the use of the legislature are stationery for the use of officers. The statute of 1853 provides that each officer shall have stationery furnished him.

Mr. CONGER—I apprehend that the chairman of the committee is mistaken in the meaning of the law, which discriminates between stationery that may be allowed to the members to the extent of thirty dollars, and the furnishing of such other matter as is customary for the use of the House of Assembly and its officers. The rule would admit of the confusion of the two allowances, and for the purpose, of testing the sense of the Convention, I move that it be stricken out.

Mr. MERRITT—It strikes me that it would be a very proper subject for a resolution. The power can be exercised but once, and the Secretary who issues the order for stationery would find himself embarrassed except by the positive instructions of the Convention. I think, therefore, it should be a matter of resolution instead of being incorporated in the rules.

Mr. ALVORD—I call the attention of the gentleman from Oneida [Mr. Sherman] and the Convention to the third section of the law which authorizes our assembling. They will find it is confined to members thereof, and it is very doubtful in my mind whether, either on the passage of the resolution, or by a rule adopted here, the Comptroller would feel himself bound to give stationery to any other persons than members.

Mr. SHERMAN—As the matter will be referred to the Comptroller for him to decide, it is perhaps a subject which can be as well acted upon by resolution as by this rule. I have no objection to strike out the Rule 39, if it is desired.

The question was then put, on the motion to strike out Rule 39, and it was declared carried.

Mr. T. W. DWIGHT—I move to fill the blank occasioned by the striking out of Rule 39 with the words "when a blank is to be filled and different sums or times shall be proposed, the question shall first be taken on the highest sum or longest time," which is Rule 39 of the Assembly, and is of course necessary in disputed cases to get at the exact will of the body.

Mr. FOLGER—That is already parliamentary law, and it raises a point which has occurred to me, whether these rules are to be our sole rules of order or whether we may refer back to what may be called the common law of parliamentary bodies. The rule proposed by the gentleman is already a part of the common law which governs every parliamentary body without written rules and therefore it is unnecessary unless some such rule is to prevail as this that these rules now written are to be the sole rules for our government. I might say that a good part of these rules is the common law of parliamentary bodies, such as "the Speaker shall arise and address the Chair before he shall be allowed to address the Convention." Unless we are to be tied strictly to the rules and not allowed to go abroad in any emergency to consult the common law of parliamentary bodies, there is no necessity for the amendment offered by the gentleman [Mr. T. W. Dwight.]

Mr. T. W. DWIGHT—I am aware that a number of our rules are already a part of parliamentary law; but there is an advantage in having those rules directly before us in the printed manual, so that they can be easily referred to. This rule has already been failed to be acted upon during our proceedings to-day, which shows that the existence of the rule had escaped the attention of members, when the shortest time was put to vote rather than the longest.

The question was put on the motion of Mr. Dwight, to insert the rule offered by him as Rule 39, and it was declared adopted.

The Secretary, then proceeded to read Rule 40.

Mr. M. H. LAWRENCE—Offered the following amendment:

Strike out the words "elected to the Conven-

tion" and insert in lieu thereof "present and voting".

The question was put and the amendment was declared to be lost.

**Mr. LAPHAM**—Offered the following amendment to Rule 40:

After the word "rescinded" in the second line, insert the words "or additional rule, or rules added" so that the rule will read "no standing rule of the Convention shall be suspended, amended or rescinded, or additional rule or rules added."

**Mr. LAPHAM**—I offer this Mr. Chairman, for a double purpose. In the first place there is an implication, as has been suggested, in the adoption of these rules that they are to be the sole rules for the government of this body. If so it is important that power to add to the rules should be expressly reserved. We have already stricken out the rules regulating the previous question and it will be impossible to adopt that rule in any emergency, upon our construction of this rule, unless we have this right expressly reserved.

The question was then put upon the amendment and it was declared adopted.

**Mr. VEEDER**—I offer the following amendment: After the word "any," in the third line, insert the words "such suspension, addition," so that as it will require a majority of the members of the house to amend or repeal a rule; it shall also require a majority of the members of the house to enact a new rule.

The question was then put upon the amendment, and it was declared to be adopted.

**Mr. FIELD** offered the following amendment to rule 40:

After the words "vote of," in the fourth line, insert the words "two-thirds of the members present or that of."

**Mr. FIELD**—The object of that is this, in case of a slim house, it will be almost impossible to get a vote of one-half of the whole Convention.

The question being put upon the amendment, it was declared adopted.

**Mr. LIVINGSTON** offered the following amendment to rule 40: after the word "repeal," in line 3, insert the words, "or addition."

Which was lost.

**Mr. ROGERS** moved that the Convention adjourn.

Which was lost.

**Mr. CONGER**—It seems to me, that one day's notice is too short a space of time to throw the Convention back into a reconsideration of the rules and I would move that "one day" be stricken out and "three days" be inserted, in the second line.

The question being put upon the amendment, it was declared lost.

No further objection being made, Rule 40 as amended, was declared adopted.

The SECRETARY then proceeded to read rule 41.

No objection being made thereto, it was declared adopted.

The SECRETARY then proceeded to read rule 42.

**Mr. SILVESTER** offered the following amendment:

Add at the end of rule 42 the words, "And to

four copies of each of which each member shall be entitled."

**Mr. SILVESTER**—This rule provides for the printing of 800 copies of reports, &c., and rule 44 provides for furnishing the members with only one copy of each. The amendment I propose, is that each member shall have four copies.

The question was put upon the amendment and it was declared to be lost.

No further objection being made to rule 42, it was declared adopted.

The SECRETARY then proceeded to read rules 43, 44 and 45, and no objections being made thereto, they were declared to be adopted.

The SECRETARY then proceeded to read rule 46.

**Mr. McDONALD** offered the following amendment:

After the word "Convention" in the fourth line, insert the words "without any compensation for such services, or claim for the same, other than that provided for by chap. 194 of the Laws of 1867."

**Mr. McDONALD**—I offer that simply to express the opinion of this Convention as to any future claim that might be made for services here, or for anything that might be voted by a future Legislature. Not that I have any idea that the present assistant would make any such claim, but I simply intend to express the feeling of this Convention, and to show that this Convention intends to conduct its proceedings strictly under the law by which it was constituted.

**Mr. ROGERS** moved that the Convention adjourn.

Which was lost.

The question being then put upon the amendment of Mr. McDonald, it was declared to be adopted.

**Mr. FIELD**—I move to amend Rule 46, by striking out the words "assistant sergeant-at-arms" and insert the word "Librarian." I make this motion from the fact that the post office having been moved into the library, the librarian can discharge these duties with little inconvenience.

The question being put on the amendment, it was declared to be lost.

There being no further objection to Rule 46, it was declared adopted.

**Mr. SHERMAN**—One portion of the report of the Committee on Rules has been passed over without action; it is from the 19th to the 22nd subdivision of the 15th Rule, providing for the appointment of four standing Committees. It was accidentally omitted in the printing but it will be found in document No. 2.

The SECRETARY proceeded to read the 19th, 20th, 21st and 22nd subdivision of Rule 15.

**Mr. HALE** moved to postpone the consideration of this portion of the report, until the Convention shall have acted upon the report of the Committee of sixteen,

Which was carried.

**Mr. HOMER A. NELSON**, a delegate, appeared in the Convention, was administered the Constitutional oath of office by the President, and took his seat.

On motion of **Mr. VAN CAMPEN** the Convention adjourned.

THURSDAY, June 13, 1867.

The Convention met pursuant to adjournment. Prayer was offered by Rev. W. H. ALDEN.

The Journal of yesterday was read by the Secretary.

Mr. MORRIS—I may not have heard correctly, but it seems to me that the secretary, in reading the correction of Rule 36, mentioned that the words "one-fifth" should be expunged and the number "fifteen" inserted instead. My understanding of the amendment was, that the word "fifty" should appear instead of "one-fifth."

The PRESIDENT—The Clerk has it as stated.

Mr. A. LAWRENCE—In the journal as just read one or two amendments appear as having been offered by Mr. A. Lawrence. They were offered by Mr. M. H. Lawrence. There was a similar error yesterday—the amendment appeared as having been offered by Mr. A. Lawrence instead of Mr. M. H. Lawrence. I merely call the attention of the Secretary to it.

Mr. PRESIDENT—It was an error of the Secretary in regard to the names. The journal will be corrected in that respect, there being no objection.

Mr. AXTELL—I rise to a question of privilege. I find in the report of the debate of yesterday, published in the Argus and Journal of this city, the following statement—reporting the remarks I made upon the debate of the previous question.

The PRESIDENT—The question now pending is one of the correction of the Journal.

Mr. BICKFORD—As I understood the reading of the journal it is not stated that Rule 45 had been adopted.

The PRESIDENT—The Chair is informed it is so stated.

There being no further correction of the journal, it was declared approved.

Mr. AXTELL—I am made to say in the debate of yesterday, in the report of the Argus, "I know that the British House of Commons and Parliament have been cited as a body in which the previous question is used for the suppression of debate, but the British House of Commons is not a model so far as the mode of conducting its debates is concerned." What I did say was this, "I know that the House of Commons of the British Parliament has been cited as a body in which the previous question is not used for the suppression of debate, but the British House of Commons is not a model so far as the mode of suppressing debate is concerned."

The PRESIDENT—The chair does not regard the question raised, to be a question of privilege.

Mr. ALVORD—I beg leave to rise to a question of privilege. I sir, believe, so far as regards mere questions of privilege, they should be very seldom, if ever used, but in this case it is a question I desire to right myself upon, where I committed unintentionally a wrong. Yesterday in the course of debate, without any very great choice of language, I used the words, in reference to my friend from Oneida [Mr. Sherman], "I am not aware that the statement last made by the gentleman is true," I should have used the words "is correct." I so intended to be understood: I did not intend to impute to the gentleman from Oneida

any departure from the truth in the ordinary acceptance of the term. I hope the gentleman will receive this apology.

Mr. SHERMAN—I did not suppose the gentleman from Onondaga meant anything of the kind; and, therefore, I took no notice of it at the time. I am much obliged to him for his correction.

Mr. HARRIS—I move that the Convention take from the table the report of the committee of sixteen.

Mr. SHERMAN—There is a little item in the report of the Committee on Rules which has not yet been acted upon. I trust that will be disposed of first. It is really the proper business in order, being the unfinished business of the Committee on Rules of yesterday.

The PRESIDENT—The Chair understood the motion was to postpone until the report of the committee of sixteen should be acted upon.

The question was then put upon the motion of Mr. Harris to take up the report of the committee of sixteen, and it was declared to be carried.

The SECRETARY then proceeded to read the report (as already printed.)

Mr. FIELD—I rise to a question of privilege. I wish to inquire whether rule 33 is enforced. I think there are several persons here, not privileged to the floor under this rule.

The PRESIDENT—The Chair enjoins on the proper officer to enforce the rule.

The SECRETARY then proceeded to read paragraph 1.

No amendment being offered, the Secretary proceeded to read paragraph 2.

Mr. RATHBUN—I offer the following amendment: The object is to consolidate Nos. 2 and 3, and refer the whole to one Committee.

The SECRETARY then proceeded to read the amendment as follows: "strike out subdivision 3, and insert at the end of subdivision 2 the words "and on the powers and duties thereof, except as to matters otherwise referred."

Mr. HARRIS—I hope that amendment will not be adopted. It was the unanimous opinion of the committee of sixteen, that these two propositions contained matters enough for the labors of two committees, one on the constitution of the Legislature and the other on its powers and duties.

Mr. RATHBUN—I find, sir, in the 7th section an additional provision for committees embracing a portion of the powers of the Legislature, and which affords very large scope for a committee upon that branch of the case. This subject is embraced in these two subdivisions. One is simply upon the Legislature, embracing its organization and the number, apportionment, election, tenure of office and the compensation of its members. This subdivision would require but very little consideration, I apprehend. And then another subdivision is upon the powers and duties of the Legislature, except as otherwise referred, and that is to be directed to other committees. Now, sir, it looks to me very much as if there were hardly subjects enough or supposed to be hardly enough within the Constitution that is to be reviewed and revised, to apportion it in such a manner as to afford places for all the gentlemen of the Convention upon Committees. I believe in making these gentlemen who are on

these Committees work, I believe in giving to all of these Committees who are appointed something to do—and in revising a subject referred to it, it will be readily perceived that the entire subject should be passed upon by one committee, so as to make it consistent with itself; and when it comes before this body it comes as a system in itself, so far as that committee is concerned. The committee under the 7th sub-division will be a committee that has very much to do with the powers and duties of the Legislature, and very much beyond what is called for to be done under these two sub-divisions here. I, therefore, ask that that amendment be considered, and I ask the gentlemen of the Convention to see whether there is anything here that requires a division of such a subject and the reference of it to two independent committees. Now, sir, I hope there is no gentleman here that is desirous of being upon a committee unless he finds it is necessary to be placed there with a view to render service that will be of value to this Convention. I have no desire myself to occupy a place upon a committee of any kind and I should be very glad to have this work so condensed as to give to gentlemen who are ambitious for places of that kind, all the work they want to do, provided they will do it expeditiously, and do it as it ought to be done.

Mr. HALE—I wish simply to say that I think the gentleman from Cayuga [Mr. Rathbun] is very much mistaken in his idea that there is nothing for Committee No. 2 to do. Some very important questions will come before that committee as proposed to be constituted by the committee of sixteen—some questions I think quite as weighty, and which will require quite as much attention and care as any that will come before any committee. The question is of the organization, the number, apportionment, election, tenure of office, and compensation of its members. If the gentleman from Cayuga is desirous of being put upon a committee where there will be nothing to do, I will recommend him to select some other committee than No. 2 on this list.

The question was then put upon the amendment, and it was declared to be lost.

The SECRETARY then proceeded to read the 3d paragraph.

There being no amendment offered the SECRETARY proceeded to read the 4th paragraph.

Mr. TAPPEN—I have the honor to offer the following as a substitute for paragraph 4: strike out the fourth sub-division of the report, and insert in lieu thereof the words: "On the elective franchise and the qualifications to vote and hold office." With some regard to the land-marks of the past, and guided as I am by the proceedings of the Convention of 1846 on a subject of this kind, I find by referring to their former proceeding that they used that exact language. It seems to me it is the proper phraseology to be embodied in a report, of this character, fixing the powers and the mode of business of this house. The words "right of suffrage" have no limitation and no definite or fixed meaning, because the right of suffrage is without restriction. It is an inalienable and inborn right, to be possessed by all, without regard to race, age, sex or color, while the elective franchise is a qualification recognized by

the people in their sovereign capacity, and conferred by their bodies in convention. I think this is the proper language to be used in connection with this subject at this time.

The question being put upon the amendment, it was declared to be lost.

The SECRETARY proceeded to read the 5th paragraph.

No amendment being offered, the Secretary proceeded to read the 6th paragraph.

Mr. TUCKER offered the following amendment, "strike out the words Secretary of State, Comptroller, Treasurer, Attorney General and State Engineer and Surveyor," and insert in lieu thereof the words "State officers and the heads of State departments."

Mr. FOLGER—I would suggest to the honorable gentleman from New York that his amendment in including the words "State officers" comprehends too much, as it would interfere, it seems to me, with the duties of the committee on judiciary, which will consider the Court of Appeals, who are State officers, and the Committee on State Prisons, which will consider the duties of the Inspectors of State Prisons, who are also State officers, and also the Canal Commissioners, who are State officers, so that this one committee would pretty nearly engross all the committees proposed by this report.

Mr. TUCKER—With the permission of the Convention then, I would change my amendment so as to read "State officers and heads of State executive departments."

Mr. WEED—I would suggest to the gentleman that he add at the end, "except as otherwise herein referred," which will except these special references suggested by the gentleman from Ontario [Mr. Folger.]

The SECRETARY then proceeded to read the amendment as follows:—

"On the State officers and heads of State executive departments, except as otherwise herein referred."

Mr. POND—I would inquire what difference it will make in this subdivision from what it now reads. If it is merely a question to strike out specifications and introduce generalities, I should prefer to leave it as it is now.

Mr. TUCKER—I will state that there are other State departments, most of which have been erected since the present Constitution came into effect in 1847—such as the Board of Public Instruction and Banking. I suppose it would be proper that this committee should have the consideration of these special departments.

Mr. HARRIS—A little more attention on the part of gentleman from New York, would have shown him that all these departments are provided for in this Committee. The Committee now under consideration provides for the five officers generally known as the State officers. Then the committee on the management and superintendence of the canals will cover the case of the Canal Commissioners. The Committee on State Prisons will cover the State Prison Inspectors. The Committee on Banking and Insurance will cover the Commissioners of those departments, and the Committee on Education will cover the Superintendent of Public Instruction, and so all th



officers that are recognized as State officers, whether they have been created since the Constitution of 1846 was adopted, or after, are provided for in these committees, but they are distributed among the several committees according to their subjects.

Mr. TUCKER—After the explanation of the Chairman of the Committee, [Mr. Harris], and with the understanding that the Committee No. 13 will include in its labors the consideration of the appointment or election of the heads of the banking and insurance department, I will withdraw my amendment.

The SECRETARY proceeded to read paragraphs 7 and 8.

No amendment being offered, the Secretary proceeded to read paragraph 9.

Mr. HATCH—I offer the following amendment: to insert after the word "management," in the second line, the word "improvement." My object in doing that, is to refer the duties of the improvement of the canals to Committee No. 10. It seems to me that is the proper place for it, and when that committee No. 10 is under consideration I shall move then an amendment so that it will read "on the superintendence and management, and improvement of the canals."

Mr. BELL—In examining this subdivision, I find it includes a very large amount of labor for a single committee. I think the progress of this Convention will be very much facilitated, and the work we have in hand will be sooner completed, if we should divide the labor as far as it can be done, so as to preserve distinct and independent subjects, and with that view I propose to divide the subdivision No. 9 as follows:

"No. 9—On the finances of the State so far as the same relate to the Canals, the Public Debt and the Trust Fund." My observation and experience are that the subject of canals is a very large one, and that the finances of the canals, the expenditures and revenues will occupy the attention and the time of the best minds in our Convention, and they ought not, therefore, to be coupled with expenditures and other revenues, including taxation. Then I would provide for another committee which may be called No. 10, if you please, "on taxation, the revenues and expenditures of the State other than canals, and salt springs, and the restrictions on the powers of the Legislature in respect thereto."

The PRESIDENT—The Chair would suggest to the gentleman whether that had not better be offered as a separate proposition. The Chair thinks it is hardly germane to the proposition of the gentleman from Erie [Mr. Hatch].

Mr. BELL—I will then, if the Chair is of that opinion, withdraw it now until the other proposition is disposed of.

Mr. HITCHMAN—I move to amend by striking out a portion of the sixth subdivision, so it will read: "On canals, their care and management."

Mr. HATCH—Mr. President, is that amendment germane to my amendment?

The PRESIDENT—The Chair thinks it is.

Mr. BELL—It occurs to me that the last amendment is provided for in the next subdivision, No. 10, and I would call the attention of the gentleman from New York [Mr. Hitchman], to that subdivision.

Mr. HITCHMAN—It seems, Mr. Chairman, that I have overlooked the matter contained in the 10th sub-division, and therefore, with the permission of the Convention, I will ask to withdraw my amendment.

Mr. FOLGER offered the following amendment:

"Strike out all of sub-division 9 relating to the canals, and strike out No. 10, and insert in place of No. 10, as follows: '10. On canals.'"

Mr. FOLGER—It seems to me, from reading this report, there should be but a single committee upon the subject of canals of the State, which committee should have charge, not only of the question of superintendence, management and improvement of the canals, but also the question of the finances as growing out of that subject; which, of course, would include the expenditures upon it, and the means of raising money for that expenditure, and which would include the revenue from them, and the proper method of distributing or disposing of that revenue for the general benefit of this State, if the revenue was in excess of the expenditure. Such, it seems to me, has been the uniform course, not only of our Constitution, but of our legislation, that the canals include everything in relation to them, not only their management, but the care of them, the superintendence and improvement, and everything that may grow out of the idea of construction, and also all which may grow out of the idea of finances relating to them, either by revenue or expenditure upon them. The general subject of the finances of the State is, it seems to me, a subject in itself. What should be the basis of taxation? what should be the object of taxation? and in what manner, and to what ends should the general revenue derived by the State be directed? how it should be disposed of, and where it should be paid. It appears to me that the subject of the canals, as important a subject as the citizens of this State can contemplate or be concerned in, should stand simple and alone, not only in their management, but in everything which may naturally grow out of them, and the subject of finances, in which is included in my mind the taxation, the amount of it, the proper object of taxation, and the proper subject of taxation, should be referred to one committee to deal with that question alone, to be denominated "a Committee on the finances of the State," as would be the balance of section 9, if these phrases in relation to the canals had been stricken out, and that the other should be a Committee upon canals, and everything which may naturally ramify from the general subject of canals.

Mr. BELL—So far as I have been able to understand the gentleman from Ontario [Mr. Folger], his views will be expressed with tolerable clearness by the amendments I had the honor to offer, with this exception: He seems to contemplate that the whole subject of canals, their revenues and expenditures, should be referred to the same committee. It had occurred to me that a more proper distribution of the labors included therein would be a division of that subject, and referring it to two distinct committees, one on the management, care and superintendence of the canals, which is a very great subject in itself—the other, upon the revenues arising from the canals, embracing everything that relates to them—the



tolls and the expenditures. It has been wisely thought that the management and the revenues arising from the canals should be separate, and should be considered distinctly by separated committees. They are independent and distinct propositions. I would call for the reading of my amendments that the gentleman may see their meaning.

The PRESIDENT—The Chair is of the opinion that the amendment should be germane to that offered by the gentleman from Erie [Mr. Hatch], and the motion to amend overrides that of the motion to strike out, and the Convention, by disposing of the amendment of the gentleman from Erie, would put itself in a proper position to receive the motion from the gentleman from Ontario [Mr. Folger]. The Chair would further suggest that it hardly thinks the substitute of the gentleman from Ontario germane to the amendment of the gentleman from Erie.

Mr. HATCH—It seems to me, sir, that the care, management and improvement of these canals are subjects that are necessarily connected. The question of the enlargement of the Erie canal is to be a great question before this Convention, and another question is whether there is moral ability enough in the administration of this State to take care of the canals. Every one knows that the Western commerce sustains the Erie canal—that the local traffic of this State, and the local traffic of the Erie canal and the lateral canals, are not sufficient even to sustain and make the repairs upon all these canals. The question is to come before this Convention—how this western commerce is to be preserved. We cannot retain that commerce except we have larger and cheaper facilities. And then again, sir, if we do not adopt some measure to save our canal system from the extravagance and corruption which has been in it, instead of taking one-third of the revenues of the Erie Canal to sustain itself and the lateral canals, in the end they will take the whole revenues of the Erie Canal. I will only add that our whole canal system is threatened from without by new and rival routes and improved railway transportation. It is threatened from within by extravagance and corruption in its management. Therefore, sir, the question of the management and the care of the canals is necessarily connected with the improvement of the canals, and these two subjects belong to one committee. I hope the Convention will adopt my motion to insert "improvement" for the purposes that I have mentioned.

Mr. FIELD—Mr. President, I rise to a question of privilege, and under that I desire to offer a resolution.

The PRESIDENT—The gentleman will state his question of privilege.

Mr. FIELD—It is in reference to the enforcing of rule 33, and the admission of privileged persons to the floor. I offer the resolution to admit a gentleman to the floor of the Convention this day.

The PRESIDENT—The Chair hopes that the gentleman from Orleans [Mr. Field] will not be too strenuous in reference to the rule until the rules have been printed.

The Secretary read the resolution of Mr. Field, as follows:

*Resolved*, That the privileges of the floor be extended to the Hon. Beman Brockway, Canal Appraiser, for this day.

The question was put on the resolution of Mr. Field and it was declared adopted.

Mr. SHERMAN—I rise to a point of order in reference to the resolution. The point is, that the rule provides how different persons may be admitted to the privileges of the floor and that they cannot be admitted otherwise, without a suspension or alteration of the rules. They cannot, therefore, be admitted by special resolution.

The PRESIDENT—The point of order is well taken.

The President then announced the pending question to be the amendment offered by Mr. Hatch to the 9th paragraph of the report of the Committee of Sixteen.

Mr. BELL—Allow me to suggest to the gentleman from Erie [Mr. Hatch], that his amendment is not properly to be considered with the subdivision under consideration. Is it not germane to sub-division No. 10?

Mr. HATCH—I propose, when we come to subdivision 10, to move to insert the word "improvement."

Mr. BELL—And also in sub-division 9?

Mr. HATCH—In subdivision 9, to make it complete, and in subdivision 10.

Mr. BELL—I misunderstood the gentleman from Erie [Mr. Hatch].

Mr. HATCH—I will read the two paragraphs as they will read as amended: "On the finances of the State, the canals, except their care, management and improvement, the public debt, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto." That is number 9. Then number 10 will read thus: "On the superintendence, management and improvement of the canals, and the proper officers to be charged therewith, and the mode of their election or appointment."

Mr. BELL—I would ask the gentleman from Erie [Mr. Hatch], if he will not withdraw his amendment until the amendment I offered is disposed of. In case my amendment meets with the approbation of the Convention his would be entirely unnecessary.

Mr. HATCH—In the view which I take of it, it is important that my amendment should be considered, as it simplifies the whole question.

Mr. HARRIS—I hope that the amendment of the gentleman from Erie [Mr. Hatch], will not prevail. This subject was a matter of very considerable deliberation on the part of the Committee of Sixteen. It was the most difficult question that the committee had to consider—the question as to where the subject of the enlargement of the canals should go. It was finally determined by that committee, and I think I may say unanimously, that this question of the enlargement of the canal was rather a question of finance, and that the whole question as to the finances of the State, including the revenues from the canals, and the provision that might be made for the enlargement of the canal, should go to a single committee. That was the deliberate conviction of the Committee of Sixteen, and I hope that their report may be sustained.

**Mr. LEE**—I have always been accustomed to defer very greatly to the opinion of the eminent chairman of the Committee of Sixteen, and especially would I defer, sustained as he is by all his colleagues; yet, sir, it is not strange, viewing this subject from different standpoints of view, that we should differ in opinion as to the propriety of the amendment of the gentleman from Erie [Mr. Hatch]. I cannot see, myself, in what way the amendment, if adopted, is to prejudice this question, and it does seem to me, sir, however it may be considered by the committee having in charge the question of finances, it would be an entirely proper inquiry, and appropriate and very desirable that the amendment of the gentleman from Erie [Mr. Hatch], should be sustained by this Convention.

**Mr. FULLER**—I would like to enquire if the amendment of the gentleman from Erie [Mr. Hatch], is adopted, it would preclude the adoption of the amendment offered by the gentleman from Ontario [Mr. Folger.]

**The PRESIDENT**—A further amendment may be offered.

**Mr. FULLER**—That amendment would strike out the amendment now proposed to be inserted.

**The PRESIDENT**—The Chair rules that the paragraph may be perfected as the Convention chooses, and then stricken out entirely, the effort being first to perfect it.

**Mr. FULLER**—I hope that the amendment of the gentleman from Erie [Mr. Hatch,] will prevail. With all due deference to the chairman of the Committee of Sixteen, it seems to me that the proposition in their report is to send the question of the enlargement of the canals away from home. It is not merely a question of finance. It is the enlargement and improvement of the canals, although the subject of finance is involved in the question. But there are other great interests of the State involved in it also. It is the most important subject I apprehend to come up before this body. It is one that entitles it to a separate committee who may consider it in all its bearings, in all its aspects, in its financial aspects among others, and not in that aspect exclusively. I shall therefore vote for the amendment of the gentleman from Erie [Mr. Hatch], and if that amendment is adopted, I then hope and trust that the proposition of the gentleman from Ontario [Mr. Folger], will be brought forward and that it will be adopted and supersede the whole. I think the subject of the enlargement of the canals is one which is entitled to a separate committee by itself.

**Mr. OPDYKE**—I hope the amendment will not prevail. I think the arrangement made by the Committee of Sixteen in this division in regard to the canals is altogether proper and judicious. The Committee on Finance will be expected to present to this Convention recommendations for the action of the Convention in respect to the finances of the State, with regard to the debt of the State, its expenditures, and, in fact, in reference to every aspect of the question. I would like to enquire how the Committee could be expected to make a recommendation which would be of value, unless they had within their purview all the subjects referring to the finances of the

State? It is well known that the canal interest is a very large interest, and the question before the Convention of the improvement and enlargement of the canals is an important financial question. How could the Committee on Finance give proper and comprehensive recommendations in regard to the expenditures and taxation of the State, without they had in their purview the whole financial interests of the State? It seems to me, therefore, that the division made by the committee could not be improved. I shall be compelled to vote against this amendment, and all others that are made to this section.

**Mr. DUGANNE**—As I regard this in the light somewhat of a test question, and one which will probably foreshadow the action of this Convention upon very important interests of the State, I call for the ayes and noes upon the amendment of the gentleman from Erie [Mr. Hatch.]

A sufficient number seconding the call for the ayes and noes they were ordered.

**Mr. TILDEN**—It was the judgment of the Committee that whoever should be charged with the duty of considering what should be done with respect to the improvement of the Erie canal, would find all consideration of that subject futile, unless there could be considered also where the ways and means were to be obtained with which that enlargement was to be made. Equally futile would it be to attempt to regulate by Constitutional provision the finances of the State, if that subject that includes the chief part of its revenues, and the chief part of its expenditures, is to be excluded from the consideration of that Committee. There is a unity on this subject, wholly incapable of dis-severance, without confusion and chaos in all your action upon the entire question. Sir, I apprehend that the effort to make any division of this subject may arise from failing to consider how different is our situation and method of action on the subject from that of the Legislature. The Legislature attempts to determine with some degree of detail what particular improvements shall be made in respect to the public works. It, therefore, has an organization adapted to that purpose. This Convention in framing the fundamental law of the State, undertakes to do nothing of that kind. It will simply make a provision in the Constitution whereby these objects can be carried out. It will make financial provisions applicable to this subject matter. The difference in its duty prescribes a difference in the mode of reference and consideration. Why, sir, how is it possible to separate income and expenditure—to separate the subject of the revenues of the State and its means of applying them to this purpose? I confess it seems to me that the Convention will involve itself in inextricable and endless confusion, unless the entire subject of the ways and means, and the subjects to which those ways and means are to be applied, are united in the consideration of one committee, and treated as one entire and indivisible subject. If, sir, I were to look back through the constitutional action and legislative action of the last twenty years at our municipalities, and inquire what it is that has made them, as is the case in the city of New York, instead of being a government, simply an organized chaos, if I may use such an expression, I should

say it is because often in our Legislature we have attempted to dis sever the disbursing power from the power which provides the ways and means. It is fundamental in all human powers, that with the power which provides the ways and means should exist the power which makes the expenditures. Sir, you cannot organize the family on any other basis. You cannot organize any of these great corporate bodies that act so important a part in our public affairs on any other basis; and the attempt to organize a government on that basis, to make those officers independent powers in the State will result in what the people of this State now experience—a confusion of expenditure, and a confusion and redundancy of taxation. Sir, there must be unity, and there must be supremacy on the part of those who provide the ways and means, and those who expend them. This subject is intrinsically and necessarily financial. I do not think, therefore, that it is possible to make any such dis severance without the greatest possible mischief in the deliberations of this Convention.

Mr. FOLGER—With deference to the honorable gentleman from New York [Mr. Tilden] who has just taken his seat, I conceive that his argument is based upon three fallacies. In the first place, one would suppose, from his remarks, that this was a body which was dealing with details instead of general principles. What we have to do is to lay foundations, and not to build superstructures. We deal with general principles. What shall be, for instance, the general method in which the taxation of this State shall be managed? To what general objects shall it be applied and from what general sources shall it be derived? That is a general principle upon which the Committee on Finance are to use their powers, deliberate and report their results. So with the Committee on Canals. They are to inquire into the whole vast subject of the canal system of this State. They are to discover and report its revenues, disclose its expenditures, and show the necessities, not only the necessities of this State, but the necessities of the far West, which is dependent, to some extent, upon this State for commercial facilities. These two committees are to present to this body the results of these general inquiries, and it is for this body to make an adjustment and arrangement of the whole subject, so that the report of one committee may be made to concur with the report of the other committee. If the Convention shall decide upon a system of enlargement and improvement, they may look to the report of the Finance Committee to get light upon the question of where the means are coming from to make the enlargement, if means are needed outside of the canal revenues, which I think will be found to be doubtful. So that we are the arbiters and judges between the two committees. We are to be called upon to settle between conflicting reports, if they are to be conflicting, in reference to the question of finance and the taxation of the State, and the need of increased canal facilities. Thus, I say, that upon the subject of the canal system and the revenues to be derived from the canals and the expenditures to be made for it, the argument of the gentleman includes two fallacies. One is, that the Convention is to settle details of finance and the other

is, that the Convention is to adopt whatever the committees may report, without attempting to adjust differences in the reports. Another fallacy is, that the report of the Committee of Sixteen already provides for what the gentleman says, cannot be done—that is, separating a general subject. What is the subject of the care and management of the canals, but an inquiry of the cost and management—an inquiry as to what means are at the disposition of the Legislature, or to be derived by taxation for their care and management. It is an inquiry which involves the ascertaining of what are those means, what the canals yield, what are the necessities for their improvement, how much justice and good faith, to the people of this State and to the people of other States, require that we should raise by direct taxation, if you choose to use that word. And another inquiry after that, is to ascertain how great shall be the body of officers—how numerous the subordinate officials who shall be scattered along the canal to manage it. Further than that, is the enquiry in reference to the comparative costs of different systems of management—whether it shall be done by the contract system or whether it shall be done under the superintendent system, or whether we shall have at the Capital one supreme head over the canals who shall be responsible for the conduct of every subordinate upon it and accountable for all detail. If the idea of the gentleman be correct that any question involving the raising of money and its expenditure, even upon the canals, cannot be separated from the idea of finances and taxation, then the report of the Committee is faulty in that respect. Subdivision No. 10 should come out entirely, for every body knows, who is at all familiar with the legislation of this State upon the subject of the canals, that the care and management of them is emphatically a question of the expenditure of money; a question of finance; a question of taxation; a question of revenue. When you have referred to one Committee, No. 10; the question of the superintendence and management of the canals, you have immediately put in their charge a subject which will require them to report to this Convention not only what shall be the system of management and who shall have the care and management of the canals, but to consider and report in connection therewith from whence shall come the means for that care and management; whether from the revenues of the canal itself or from the general fund of the State. So that I say, the argument of the gentleman, and I say it with great respect, is built upon three fallacies, as I have already stated, and not the least is that the subject of the canals can be considered without also considering the questions of finance and taxation. The first inquiry is, what do they yield? Do they yield a surplus? If so, what shall be done with that surplus? If they no not yield a surplus, then is the necessity for their maintenance or enlargement so paramount and preponderating as to call upon this State to direct that its Legislature shall provide means for the enlargement, by taxation or otherwise? How shall that debt be created? How shall that money be raised? When shall the debt created be paid, &c., &c? All these details grow immediately out of the first step toward a consid-



eration of this subject of the canals; and any committee which is charged with the consideration of the question of their care and management (without the "improvement," as suggested by the gentleman from Erie [Mr. Hatch]—striking out even the word improvement), as I have endeavored to show, and I think I have shown will be required to make financial consideration, and investigation into the finances of this State and its resources.

Mr. MURPHY—The gentleman from Ontario [Mr. Folger] in stating that the gentleman from New York [Mr. Tilden] has fallen into fallacies, appears to me has fallen into one great error himself. He argues his case upon the idea that the question of the enlargement of the canals can be considered by the committee now under consideration. Now, sir, I suppose it to be perfectly competent for the committee that shall be appointed under this resolution to consider that question in all its bearings upon the interests of the people of this State, otherwise than as a financial question. I hope if this paragraph shall be adopted, the committee will be so constituted that the great interests which have been referred to by him and by other gentlemen, will be considered by this committee as well as the financial question involved. Now, I differ from the honorable gentleman materially, in regard to the province of the second committee proposed here and which we must consider. The province of that committee is to consider the management and care of the canals. It has reference particularly to the administration of the canals—whether, as he himself has said, we shall continue the contract system, or some other system—whether it shall be managed by elected officers or appointed officers, or how otherwise. These are the questions which are now agitating the public mind, and which are the subject of legislative consideration, and they demand from this body special attention independent of the question of enlargement, or the question of the finances of the canals. True it is, that there can be no administration of the canals without an expenditure of money. The keeping of them in repair will necessarily require the expenditure of money; but that is only incidental—natural. We all understand that the canals cannot be carried on without appropriations—without means, and that these appropriations and means are for the most part ascertainable from year to year almost with mathematical precision, and that the Committee on Finance can consider the great question committed to them without being affected by this question as to what the care and management of the canals may cost. Now, if we pursue the course proposed in the substitute offered by the gentleman from Ontario [Mr. Folger], we may have two committees reporting, one for a large expenditure for the canals, and another for restricted provisions in regard to the means for the expenditures. I hope this Convention will see the necessity of leaving this Committee on Finance and the revenues and expenditures of the State, possessed of the elements that are necessary for them to give a full and satisfactory report, and that we will confine the other committee simply to a consideration of the administration and care of the canals.

Mr. CONGER—This question presents itself to

the Convention at this time, under the guise of a mere parliamentary question, and as such it would hardly be worth the time that it consumed in its discussion, were it not that in point of fact it revives an old subject. We are called upon, Mr. President, principally, to attend to the matter of the revision of the Constitution, and in that purview only as far as the subject of the canals is specifically alluded to in the Constitution. I would desire to draw your attention to this consideration, that in the Constitution, as amended at the session of the Legislature in which I had the honor of holding a seat in the upper House (following up the first constitutional plan for the enlargement of the canals, since the adoption of the Constitution of 1846, which I had the honor to present), the question of the enlargement, is a simple finality. But it does not come within the scope and meaning of those who seek now to make some other and further enlargement of the canals. If, sir, the proposition related, not only to the same subject-matter, but to the same result, I would say it would be unwise at this time, and would object to a new distribution of the committees unless the Committee of Sixteen, who have recommended such committees, should fail to satisfy us of the wisdom of their plan. But, Mr. President, you perceive the parliamentary difficulty as well as other gentlemen of this body. You know perfectly well that if the recommendation of the Committee of Sixteen is departed from, it is a virtual instruction to you that in constituting the other committee, which is thus to have special charge of the subject of enlargement, you are to give to that committee a preponderance of the friends of the measure over those who oppose it. You would be commissioned and called upon to do that work now in advance of all inquiries upon the subject, and you could not, it seems to me, pursue the same liberal and enlightened course with which you started when you regarded all these subjects as fresh subjects for development, and constituted your Committee of Sixteen as though there were no other members of this Convention than those who represented the State at large, and all its interests at large. I cannot think that the gentleman from New York [Mr. Tilden] was guilty of any fallacy in stating that the subject of the enlargement of the canals, or to use the milder phrase given to it by the gentleman from Erie [Mr. Hatch], their "improvement" cannot at all be dissevered from the finances of the State, because that improvement or that enlargement can only be effected by a large and continuous expenditure of money for several years to come, so that if you must look now into the merits of this question which I would prefer to have postponed to a future day, you cannot fail to take the question of fresh expenditure up in connection with our existing debt, an embarrassment which prevails not only over the State, but in every town and county, and with every individual in the State. We are told that the debt of the State is limited by a sum of perhaps fifty millions of dollars. We know that the aggregate of the debts of towns and counties would be quoted at about four times that sum. We know that our share of the national



debt, if distributed over the State of New York, under the Constitution, in proportion to the population, would amount to several hundred millions of dollars, and if you come to consider the relation which the City of New York bears, as the financial centre of the Union to this subject, you cannot fail to believe that a much larger proportion of the National indebtedness would fall on our citizens as it must fall upon the capital represented in that city. Now, the simple fact is this, that in departing from the wise rule we have proposed to be established of appointing committees of inquiry, we are called upon to initiate a system, by which, before the exact sum of that indebtedness which belongs to the State and its people is counted up by your Finance Committee, you are disregarding all your own convictions and personal impressions to move forward in the matter of contracting a fresh debt as a measure specifically meeting at this time your approbation. If, when the report of the Finance Committee should come in, it should seem practicable to give some relief to the measure, then I would say we could act intelligently and well upon it. But before we know anything of the subject, to seem to favor an enterprise of such high magnitude as this, is a departure from the wisdom, and the moderation of our counsels which has heretofore prevailed. But practically, Mr. President, supposing this measure passes. Suppose it is adopted by the Convention,—are we relieved from any further parliamentary difficulties? Instead of having a report from one committee on this comprehensive subject, which might be a majority and minority report, we would be embarrassed by reports of two committees, each perchance containing majority and minority views, and instead of any unity of purpose to be obtained by such a course, we are to be met at the threshold of this discussion by divided counsels. I trust the time has not yet come that any such unpleasant task would be forced upon the President of this Convention by the adoption of a measure which, however it may be discussed, has no other practical parliamentary meaning than this: That this body will instruct the President to give a committee to this special subject, for the enlargement of the canal, more favorable to it than to those opposed to the measure. That is the great point upon which the question now before this body rests, that it is under a great pressure and an anticipation in point of time, in point of advice and a full examination of the subject, under pretence of revising an article of the Constitution, (which, so far as the enlargement is concerned, is declared on the face of it to be a finality,) the inauguration of a new movement by which that enlargement shall be further prosecuted, and a fresh expense entailed upon the people.

Mr. HATCH—I only desire to say in reply to gentlemen that they have taken a very erroneous view of the amendment that I have proposed. It really has not the importance they have attached to it. If gentlemen are disposed to force this on at this time as a test question in relation to the matter of the canals, it is no fault of mine. The amendment that I proposed is merely as to the care, management and improvement of the canals. It is a very simple proposition.

Mr. HUTCHINS—I believe, in the discussion of this question so far, it has been admitted by all that the arrangement made by the Committee of Sixteen is the best, under the circumstances, that could be presented to the Convention for its adoption. Now, the question here is not whether the Committee provided for by paragraph number 10 may not be so amended as to include the subject matter of the canals as well as their care and management, but the question which this Convention is to decide is, to which it should be referred as the most appropriate committee. Sir, I should as soon think of calling upon a man to construct for me an expensive house, or make other improvements without knowing whether I had the money in my pocket or not to pay him, as to separate the question of the finances of this State from the canals and their improvement or enlargement. Now, if gentlemen wish to shorten the session of this Convention, if they wish to proceed to business, at once, and to accomplish something, refer this subject to the committee as reported by the Committee of Sixteen, and obtain from them an intelligent report upon the whole subject, and act upon it. If we are to have two committees on this subject, if they are to come in here, it may be with conflicting reports, and we are to sit here during the dog days and discuss that, that is one thing. If not, refer it to a single committee, unprejudiced, unbiased, uncommitted on this subject, and let us have a report from that committee on all these details, and we can act intelligently. I would call the attention of the Convention to a provision of the rules which is meant to cover this very subject. They will find that the committee recommend a committee of sixteen on the subject of finance; while the committee provided for by paragraph No. 10, is to consist of seven members. The object was to have the committee represent all interests, and be large enough to examine the whole subject in gross and in detail, and give to this Convention an intelligent and proper report of their conclusions. I hope the Convention will adopt the recommendation of the committee of sixteen.

The question was then put on the amendment of Mr. Hatch, and it was lost by the following vote:

*Ayes*.—Messrs. Alvord, Andrews, Archer, Axtell, Baker, E. Brooks, E. P. Brooks, Case, Chertree, Clinton, Corbett, Curtiss, C. C. Dwight, Ely, Farnum, Field, Folger, Fowler, Frank, Fuller, Gould, Hadley, Hand, Hatch, Huntington, Lee, Masten, McDonald, Merrill, C. E. Parker, Potter, Prosser, Reynolds, Rogers, Root, Silvester, Sherman, M. I. Townsend, Van Campen, Verplanck, Weed, Young.—42.

*Noes*.—Messrs. A. F. Allen, C. L. Allen, Ballard, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, E. A. Brown, W. C. Brown, Cassidy, Champlain, Chesebro, Church, Colahan, Comstock, Conger, Cooke, Daly, Develin, Duganne, T. W. Dwight, Eddy, Endress, Ferry, Flagler, Francis, Garvin, Gerry, Graves, Greeley, Gross, Hale, Hammond, Hardenburgh, Harris, Hitchcock, Hitchman, Houston, Hutchins, Jarvis, Kernan, Kinney, Krum, Lapham, Larremore, Law, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Livings-

ton, Loew, Lowrey, Ludington, Mattice, Merritt, Merwin, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Pond, President, Prindle, Rathbun, Robertson, Roy, A. D. Russell, Schell, Schumaker, Seaver, Seymour, Sheldon, Smith, Spencer, Stratton, Strong, Tappen, Tilden, S. Townsend, Tucker, Van Cott, Veeder, Wake-man, Wales, Wickham, Williams—92.

The SECRETARY then proceeded to read the amendment of Mr. Bell, as follows:

No. 9. On the finances of the State, so far as the same shall relate to canals, the public debt and the trust fund.

Mr. BELL—My object was, not to bring on the discussion which has taken place upon this subject, but it was simply to divide and arrange for the purpose of facilitating the purposes of this Convention. On looking at subdivision No. 9, I find it contains several distinct propositions, and however they may fail to harmonize in the end, they are subjects of distinct reports, and I think pertinent to be acted upon by this Convention, and by Committees of this Convention. It is the province of the Convention to harmonize and consider these reports, should they be discordant, which they may not be necessarily. The great evil, I think in our State government, has been that we have looked at things too much in confusion; for instance, extreme Canal men have looked at the revenues of the canal and endeavored so to arrange legislation as to appropriate the entire amount to the enlargement, superintendence, care, or to the damages of the canal. The object I have in view, is to ascertain the capabilities of these canals and their necessary care and superintendence, and of course any suggestion which may be made upon their improvement and enlargement, and to separate that entirely from the question of the finances of the State; and when the report of that Committee shall have come in and have been considered, we can, it seems to me, compare it with the finances to see whether we will have sufficient revenue, after supporting the government, after answering the proper objects of the State, to undertake that work. The other subdivision I propose, is to divorce it entirely from the management of the canal and to ascertain the revenues of the canal and to see if we can in some way carry on these great public works without a resort to so large an amount of taxation. It will be seen by the statistics we have before us, notwithstanding we have derived large amounts from the canals for the general fund, yet we have been obliged to levy very large amounts by taxation to sustain these canals; and I think, if I remember right, within the last twenty years, nearly \$14,000,000, have been expended upon the canals from direct taxation. I hope this division will be made, not because I would here indicate my purpose to enlarge the canals or not to enlarge the canals, but these amendments are simply with reference to the proper division of the labors of this Convention. My design is to add another subdivision called No. 10, and still retain the present No. 10, as No. 11, as reported from the Committee of Sixteen.

The question being put upon the amendment of Mr. Bell, it was declared to be lost.

The SECRETARY then proceeded to read the second amendment offered by Mr. Bell:

"No. 10. On taxation, the revenues and expenditures of the State, other than canals and salt springs, and restrictions on the power of the Legislature in respect thereto."

The question being put upon the amendment, it was declared to be lost.

Mr. ROBERTSON offered the following amendment to the 9th sub-division:

To insert in the first line after the word "finances" the words "and property," and after the word "State" to insert "included."

The question being put upon the amendment, it was declared to be lost.

Mr. FOLGER—Is my amendment now in order?

The PRESIDENT—No further amendment being offered, the amendment offered by the gentleman from Ontario [Mr. Folger], is now in order.

The SECRETARY proceeded to read the amendment, as follows:

"To strike out subdivision 9, relating to the canals, and also to strike out subdivision 10, and insert in lieu thereof the following: '10. On canals.'"

The PRESIDENT—The Chair does not understand that No. 10 has yet been reached.

Mr. FOLGER—Of course not sir, but in order to make my amendment intelligible, it was necessary to connect both of these sections; but a division can be had upon the question and I call for a division that the question may be taken first on striking out No. 9.

Mr. WEED—I wish to say a word upon this question. I deem it different from the one just passed upon by the Convention by the ayes and noes. This, in the shape it is offered by the gentleman from Ontario [Mr. Folger], cannot be construed to embarrass in any way the President of this Convention in the appointment of the committee upon this subject. It makes Committees No. 9 and No. 10 conform to the spirit of the other committees, as laid down by the Committee of Sixteen. If the Convention will notice, every other financial subject and every other subject of State expenditure is referred to a separate and independent committee. The State prisons of this State, result in the expenditure of money. They are a cost to the State, and we have to resort to taxation and ways and means have to be provided for the support of these State prisons; but the mode of providing the ways and means is not included in subdivision 9, as reported by the Committee. The common schools are of the same character, and the educational interests. Therefore I say, it seems to me that the amendment of the gentleman from Ontario [Mr. Folger] harmonizes with the whole spirit of these committees, and leaves it, as it seems to me, the subject should be left before this Convention. As I look upon the duties of the gentlemen who shall be appointed to serve upon Committee No. 9, without the canals, they have the great financial interests of this State in their charge. It is a great question, how far the Constitution shall limit the power of the Legislature over the finances of the State. That power, with the question of taxation and the general questions of finance,

are as much as any committee, in my view, of this body, can properly attend to. The next question is the question of canals, and every gentleman upon this floor must admit that is a great question. That involves great interests of the people of this State, and one that will occupy a great deal of the time of this Convention. It seems to me the position taken by the gentleman from New York [Mr. Tilden] is not the true position. He seems to think that the question of the enlargement, repairs and management should be under the charge of one committee, and that that committee should digest, if possible, a perfect system, and submit it to this Convention, that this body then can control it, and provide the means; and if this body itself, as a Convention, do not see their way clear upon this question of ways and means (which is too often the case), after they shall have digested a plan for the enlargement, if they should digest such a plan, it can then be referred to a Committee of Ways and Means to see if means can be provided for the enlargement. But, as it seems to me, the whole system, should be under the charge of one Committee; and if, as suggested by one gentleman, that Committee, as provided for in these rules, is not large enough, with seven, it is easy to have it, and I deem it proper, that the Committee upon the canals of the State, being so important, should be increased to fifteen. It seems to me, therefore, Mr. President that to be in harmony with all the rest of these Committees, reported on by the Committee of Sixteen, the amendment of the gentleman from Ontario, [Mr. Folger,] should be adopted.

Mr. FERRY—I have listened very attentively to the remarks which have been made upon this subject, with a view to see where the real duty was between these various propositions. I fail to see that there will be any restriction upon the power granted to that committee, No. 9, if it should be left in this simple shape; it is simply to be a Committee upon the finances of the State. If I understood the chairman of the committee, who made this report, the claim, I believe, was, that the question of finances necessarily embraced the consideration of all the finances relating to the canals, that being, perhaps, the most important in the State. It seems to me that necessarily would be so, and it strikes me it would be inconsistent and incongruous if the Committee on the finances of the State should have, also, special reference to the canals, and ignore the fact that there are other important subjects from which revenue is derived, and of which no mention is made, when there is a negative inference, at least, to be drawn, that they were to be included. I am in favor of giving to this Committee on Finance, full scope to consider every source from which revenue is derived and every question relating to finance, and I think by this amendment they have it. I would not limit them in any respect. As Committee No. 10 is proposed here in this report, there would seem to be a restriction, to some extent, which is necessarily inconsistent, as upon any reasonable argument it must appear that the care and management of the canals necessarily has some reference to the cost and expenditures, and it cannot be treated intelligently any other

way. This amendment, as proposed, would be to have a committee substantially upon finances, and another one upon canals, and I would let each committee have full scope, and let each one draw from every source in their power any argument they can to justify any position they may take about it, and if they both should travel over the same ground to some extent, it would do this Convention no harm; and even if there should be conflicting reports I don't see how it could do any harm to this Convention. I am here to hear the various views, and the different propositions and results they may give; that is what we are here for, in order to consult and decide these questions understandingly and properly. My view of the proposition is, and that is why I am in favor of the amendment of the gentleman from Ontario [Mr. Folger], to give to both Committees full scope without restriction upon either, and it seems to me all ought to be satisfied with it.

Mr. CHURCH—I have been unwilling to occupy the time of this Convention with any remarks upon the subject of this reference. I was in hopes that the report of this committee would be adopted. I think the adoption of this report would facilitate very much, the business of this Convention, and I do not believe, although the report may be criticized in some particulars, that a better arrangement can be made, than was reported by the committee. In reference to the immediate proposition before the Convention, it is simply the same proposition as that made by the gentleman from Erie [Mr. Hatch], which has been voted down by the Convention, it involves precisely the same principles, and it is this:—An attempt to separate the project of the enlargement of the Erie canal, from the financial question involved in it. Now, sir, with all due respect, it seems to me it is utterly impossible to separate these two questions. The financial question is the principal, if not the only difficult question connected with that subject. If we had a surplus of money, if there was no difficulty in relation to the ways and means for enlarging the canal, there would probably be on the part of the members of this Convention no objection to it; but, if this enlargement is to be entered upon, it must be done in one of three ways. In the first place, by the appropriation of the surplus revenues of the canal and the postponement of the present debt of the State. 2d. By direct taxation. 3d. By incurring a debt.

Mr. HATCH—Will the gentleman allow me a moment. It seems to me the first question is not the amount of surplus money the State has on hand; but the question is, the care and management of these canals in the administration of the State, so as to protect the revenues of the canals from extravagance and corruption, and if this cannot be secured, it is a matter of no consequence what the surplus monies shall be derived from for they will all be squandered.

Mr. CHURCH—I beg to say to my friend from Erie, and to all other gentlemen who are understood to be in favor of the enlargement of the canals, that the report of this committee and the arrangement made by this committee involves in no respect the merits of that proposition; it only determines the manner in which this Convention



will proceed to act upon the subject. In one aspect of the case there is a double proposition in this paragraph No. 9;—the propriety and the necessity of enlarging the canals and the ways and means by which that enlargement is to be effected. And this is necessarily so; it cannot be otherwise, and because it could not be otherwise, this Committee determined to have a large committee of sixteen for the purpose of considering and reporting upon this subject; or, in other words, to have two committees in one, upon the whole of this question, who would consider it in all its aspects. It seems to me that the finances of the State, and the question connected with the finances of the State cannot be separated. I should regard it as exceedingly unfortunate for the business of this Convention to have two committees make conflicting reports upon the same question; it would lead to confusion, and would not in my judgment be satisfactory to any member of this Convention. It is all important, and it is constituted one of the great labors of this committee, that the business of this Convention should be so parcelled out, that each committee should have entire and exclusive charge of one given subject. It is important that we should have one harmonious system of finance for the State in all its departments, and that system can only be devised by the constitution of one committee. In the Convention of 1846, this very committee had in charge, not only all the subjects which this proposition would give it by this report, but it also had in charge what is contained in the sub-division No. 10, the superintendence and management of canals. But it was thought by this committee that this question of the superintendence and management of the canals, was an independent proposition, and it might well be separated from the great question of finance, and I don't agree with my esteemed friend from Ontario [Mr. Folger] when he says that this question of the superintendence and management of the canals is a financial question. It is in no proper sense a financial question; and in relation to the management of the canals, if it is any way connected with the finances, it must be left to the Legislature,—I mean as to the amount expended upon the canals for ordinary repairs from year to year; it cannot be determined by this Convention or by any public body. It may be in one year \$500,000, or it may necessarily be \$1,200,000; but the expense of keeping the canals in repair must first be taken out of the revenues of the canals, whether they be great or small; it cannot be regulated or fixed by any provision of the Constitutional Convention, except so far as they may fix it and regulate it, by the manner in which the canals are kept in repair, and by the officers that are provided. But this provision does not constitute a financial question any more than the Committee of Judiciary constitutes a financial question. Of course, they provide for the election of judges of the State. It takes money to pay them, but it is not a financial question in any proper sense of that term, because these expenses are paid out of a fund to be provided by the Legislature, from year to year, but it cannot be regulated any other way. So with the Committee on State Prisons, that might be called, in some sense, a financial ques-

tion, but it is not, in the sense in which this paragraph is intended to appoint the committee, because the expenses of certain persons are provided to be paid out of a general fund, to be appropriated by the Legislature, from year to year. But, sir, the revenues of the State, and the expenditures of the State, whether from the enlargement of the canals, or for any other project or scheme that may be proposed in this Convention, must, in my judgment, be under the charge of one single committee, to make a report for the consideration of this Convention. It cannot be done otherwise. The proposition which is now pending before the Convention might involve precisely this state of things. The Committee on Finance, which includes, as I understand the proposition, all the finances in relation to the canals, might make a disposition with reference to all the revenues of the canals, and the committee might provide for the application of those revenues upon the debt in a certain way, and it might place certain restrictions, and perhaps, certain prohibitions upon the action of the Legislature, with reference to finance and the appropriations of public money; then the Committee on Canals, which is proposed by this amendment, might come in with a report, which would entirely upset and destroy the report of the Committee on Finance, and which would necessarily produce the greatest possible confusion in the action of this Convention. I do not intend to express or intimate any views upon the various projects which may be presented for the consideration of this Convention, I only say, and insist, that this great question of finance, and this great question of the revenues of this State, and the expenditures, for any purpose whatever, must necessarily be, as it seems to me, under the charge of one single committee, and I hope and trust, sir, that this amendment will not prevail, but that the report of the committee will be adopted, because I believe it will greatly facilitate the action of this Convention.

Mr. ALVORD—It seems to me, Mr. President, that we have our work laid out here in the manner in which we have got to proceed with it. Judging from the remarks of the distinguished gentleman from Orleans [Mr. Church], we are to make these committees and they are to take the several matters which we shall intrust to their charge, and upon the incoming of their report, it is to be the embodiment of our ideas, and go down to the people as their Constitution. There is no other legitimate conclusion to be deduced from the remarks the gentleman has made. I can see no difference myself, between two committees having different names and with different powers, coming into this Convention without harmonious action, and a single committee with one-half or a majority submitting a report not harmonizing with the views of the other half, or the minority. And that is all there is of this last position taken by the gentleman from Orleans [Mr. Church]. We have a right, sir, if we are upon committees to speak on our own notions and our own views in regard to matters placed before us, and a Committee may well be divided, not only twice, but three, four, five or six



times. As a matter of necessity they must be. The result of their deliberations is to bring inharmonious action before the Convention, and it is because Committees view matters under different lights. Now, sir another thing. I deem that it is wrong upon the part of any member of this Convention, at this stage of its proceedings, to undertake to bring before the body of this Convention the idea that there is an array of a portion of members in favor of any one provision as against another. We came here for the purpose of general enlightenment—to look over all these questions in their broad view as questions affecting the entire interest of the people of this State, to enlighten each other, so far as our knowledge will go, and for that purpose to assimilate and harmonize our different views in our final action. Now, sir, the question of the enlargement of the canal should not enter, in my opinion, into this discussion. But it strikes me, sir, that this very Committee of Sixteen, in framing their report for a division of subjects which they have placed before us, have themselves dragged this matter into the Convention. They have proposed to give the subject of the Judiciary to a separate and distinct Committee, and yet the question of the Judiciary involves the consideration of the expense of maintaining it, and requires that the moneys expended for it be raised out of the pockets of the people. They go on again and give us a Committee on States Prisons. They do not say "for the care and management of State Prisons," but for the "State Prisons." I ask you, sir, and I ask every member of this Convention whether that does not involve a question of finance—whether if we have State prisons, we have not to maintain them if they will not maintain themselves, or if they will, to take care of the revenues derived from them. And so I might mention other committees in reference to this matter. All that we propose here is that which we grant to the committee, that they shall be a Committee on Finance, upon the revenues and expenditures of this State, with entire power over the vast field of finance, revenue and expenditure, yet so far as the canals are concerned, they shall not be considered in one aspect by one committee and in another aspect by another committee. That is all we ask in regard to this matter. I, for one, hope and desire that the very best efforts and the very best intellect of this Convention will give that due attention to the finances of the State that their immense importance demands, and that it shall speak on this subject undisguisedly and fearlessly in such direction as members please. I care not if there come up from every one of the committees, their views in financial operations connected with their departments. I desire it. I take it that it is not to be left to the Committee of Sixteen what shall be the action of this Convention as a finality, but that it depends upon what shall be the united and concerted wisdom of the Convention, what shall be the result of its labors, and which we hope the people will approve by sustaining the acts we have performed. With the view I take, with the lights I have to guide my action, I hope that we may take the middle course, and not here determine by a vote of the Convention, either impliedly

or directly, either in favor of or against the question of the enlargement of the canals, but leave it where we leave other questions—the judiciary, our State prisons, education and others—to be taken care of in the future, when the reports of the committees shall come in, by the Convention.

Mr. PRINDLE—I am unwilling to sit here in silence and allow the idea to go forth that this is to be a test question whether we are in favor of an enlargement of the canals or not. For myself, I wish it distinctly understood that whatever vote I may give upon this question, I vote neither in favor of an enlargement of the canals nor against it. I do not wish to decide that question at the present time. I do not wish to give a vote upon that question now. I have not examined it. Are we to vote for it, or are we to be understood as voting in favor of or against the enlargement of the canals before a committee has reported upon the question, before we have examined it, and before we have had any statistics to enlighten us? I trust not, sir. Now, the question of the canals and the question of the finances of this State are interwoven, one with the other, and they cannot, by any possibility, be separated, and yet they present too vast a field of inquiry, perhaps, for any one committee to examine. We may separate them here. We may send one part to one committee and the other to the other. But, sir, after the committees have brought in their reports the subjects must be discussed together, and in connection in this Convention in Committee of the Whole. We shall be called upon in the end to consider them together. Now, it seems to me that the best way in which we can get out of this dilemma is to adopt the proposition of the gentleman from Otsego [Mr. Ferry] that we simply have one Committee on Finances and another on Canals, leaving to their discretion to consider if they please the whole subject. What difference does it make if the Committee on Canals consider the question of finance, and the Committee on Finance consider the question of canals, so far as necessary to make intelligent reports upon the particular subjects confided to them respectively? When the report of the two committees are before us, we can consider the matter in Committee of the Whole, and we shall be compelled to consider the two questions together. It seems to me that that is the simplest and most intelligent mode of dealing with the subject.

Mr. M. I. TOWNSEND—The location of the question of the enlargement of the Erie Canal, if that question shall arise before any of the committees, as they are proposed to be constituted by the Committee of Sixteen, seems to take it for granted that there is no interest connected with the canals of this State, except the interest of finance, because there is in neither committee the right to consider any such interest. Committee No. 10 is restricted to the simple consideration of the care and management of the canals. Now, sir, I think that De Witt Clinton, if he could look into this Chamber to-day, would be somewhat surprised to see so many gentlemen impressed with the idea that the State has no interest in the canals except that of receipts and disbursements. I do not understand, sir, that these

canals were undertaken as a speculation on the part of the State. I do not understand now that the question of receipts and disbursements on account of the canals of this State, form any considerable proportion of the interest connected with these great enterprises. I look upon our canal system as the arterial life of the State of New York. The gentleman from Rockland [Mr. Conger] has stated to us in reference to the debt that is resting upon us and the burdens under which the people of the State are now suffering. I would ask that gentleman, through the Chair, how the people of Rockland get their bread except through our canals? The very corn that is fed to his cattle and horses, and to a very great degree, the very bread that is eaten by the people of Rockland, must be obtained by them through our canals. Sir, my constituents—and though I represent the people of the State of New York, I mean by the term, my immediate constituents—in the county of Rensselaer, are dependent upon the canals for the very bread that they eat. And the commercial metropolis, some of whose representatives feel disposed to shut off all inquiry in regard to the canals except as the financial interests of the State are affected, is as much dependent upon the canals for its prosperity as upon any other source whatever. The merchant in New York, dealing in heavy goods depends upon the canals for their transportation. Sir, who can estimate the amount of business tending to create and promote prosperity arising from the receipts of produce brought from the far West through our canals? The mercantile interests of this State are affected by the canals to a degree that it is not easy to compute in figures. Yet, sir, if the report of the Committee of Sixteen is adopted every such consideration is shut out from the deliberation of any committee—at least, I do not find where it would be considered. I would be thankful to any gentleman who will tell me where and by what committee it is proper to consider the fact of the increasing value of the property in that part of the State over which the canal runs, if you take the report of the committee as it now stands. I understand that the operation of our canals has made land in the county of Orleans as valuable for agricultural purposes as the land in the county of Columbia or the county of Rensselaer.

Mr. CHURCH—The subject which the gentleman mentions is included in this proposition to refer it to Committee No. 9.

Mr. M. I. TOWNSEND—Does the gentleman from Orleans [Mr. Church], consider the effect of the canal in increasing the prosperity of the State, is to be considered in that committee?

Mr. CHURCH—Their value to the finances of the State is expressly referred to this committee.

Mr. M. I. TOWNSEND—The subject certainly is a large one, and will engross the entire attention of some committee. The real objection to this division of committees is that Committee No. 9 has too much to do. Committee No. 10 has nothing to do, substantially, whatever. Now, sir, I feel the burden of taxation pressing upon my mind as strongly as any one, and I think if this Committee No. 9 would devote a little more time to the question of taxation, they

would have the opportunity to do as much to relieve the people of the State from their burdens, as in watching over the canals. There is one important question that that committee ought to consider, a question, that by the Constitution of 1846, was left in the discretion of the Legislature. The Legislature, as I conceive, has not done its duty in regard to that great subject; I refer to the question of the taxation of personal property. This Convention, in my opinion, should make it compulsory upon the Legislature of this State to make personal property bear its equal share in the burden of the taxation of this State; but it is a notorious fact that almost one-half of the property of this State entirely escapes taxation; and if the gentleman from Rockland [Mr. Conger], and the gentleman from New York [Mr. Tilden] will join heart and hand here and so apportion that burden as to bring personal property that now escapes taxation under the purview of the Legislature and make it bear its share of taxation, the burden that now rests upon the people of the State will be greatly lightened. Those immense interests that are connected with the railroads out of this State building at the West, the personal property that lies in the shape of merchandize in the commercial cities and localities of this State, if they are made to bear their due share of the public burden, the taxation will lie less heavily on the people of the State than it does at the present time. I say I concur with the gentleman from Rockland [Mr. Conger], that taxation at the present time is a real evil although, I believe, the gentleman has in his imagination magnified the liabilities of this State some four times. Whatever be the amount, taxation rests heavily upon us, and it is our duty to do every thing in our power to lighten that burden. And if Committee No. 9 will devote themselves to that subject, as I have no doubt they will, they will have plenty to do. And at the same time, permit me to say, that however heavy be the burden of taxation I have no doubt the patriotism of the people is sufficient to carry us through. It was for that great and glorious object, the preservation of our country and the preservation of its principles, that this debt was contracted, and I know that our patriotism will be sufficient to sustain us through every difficulty. However severe the burden may rest upon us, it is none the less the fact that that burden is resting upon us, and I hope the proper committee will discharge its duties by bringing every portion of the property of this State within the purview of the Legislature, and make it compulsory upon the Legislature of the State of New York to impose this burden equally upon all. But at the same time let there be no mistake on the subject. I would not undertake to do what, under the Constitution of the United States, I have no power to do. I would not undertake to tax property we have no right to tax, but I would tax that property that is not now taxed at all in any shape, and which it is clearly our right to tax, and thus relieve the people of the State of New York from their burden. It is because I conceive that Committee No. 9, as proposed by the report of the Committee of Sixteen, has too much to do, and that Committee

No. 10 has substantially nothing to do, that I would commit the great subject of the canals to Committee No. 10.

Mr. COMSTOCK—It seemed to me, in the committee, that these two subjects were so connected that they ought to be examined together, the subject of a large expenditure of money for improvements, and the subject of ways, means and plans; I, therefore, concurred in the report of the committee and am content on the whole to abide by it now, although I do not think the question is fundamental, because I do not believe that the merits of the canals, or the merits of any particular scheme for improvements are involved in this question of reference. I wish to say now, and it is all I desire to say, that, in sustaining the action of the committee, I am not to be understood, for one, as at all committed against the early enlargement and completion of the canals. On the contrary, upon a view of the whole subject, when it shall be presented by the committee in a financial view as well, I hope to be able to stand among the foremost of the friends for the earliest possible perfection of our system of internal improvement, but I do not consider the subject involved in this resolution.

Mr. MERRITT—The Committee of Sixteen was constituted with great care and good judgment and with a liberality which has been most heartily commended. They have considered all the questions which would probably come before this body. They have made a unanimous report;—that report meets my most hearty approval. It perhaps may have been a little unfortunate that this discussion on the canal question should have been introduced; that the gentleman from Erie, [Mr. Hatch] in proposing his amendment introduced the subject, and, therefore, made it, to a certain extent, a test question, whether the subject of the canals should be taken up and considered by a committee constructed with special reference to that interest. Those who pretend to have it in their charge were wrong to have it presented at this time, to secure if possible an expression from this body favorable to that interest, and in some degree at least influence the formation of committees.

Mr. HATCH—I made no proposition before the Convention in relation to the enlargement of the Erie Canal. I merely suggested as an amendment the word "improvement" be inserted in resolution No. 10.

Mr. MERRITT—If I recollect the gentleman's remarks correctly, he said that this subject would be one of great importance to be considered by this Convention—I mean the subject of the improvement of the canals. For that reason he desired it to go to this Committee to be reported upon. And now, in regard to the question of the diffusion of finances, which has been alluded to. The people do not understand fully the various appropriations which have been made, but they do to understand in the aggregate what they have got pay. It is very proper, therefore, that the whole subject should be considered by one committee. They know what seven mills tax on the dollar means, in the aggregate. They do not go into particulars and fractions of mills, to be raised for specific purposes. In the construction of this

Committee No. 9, to be composed of sixteen members, all parts of the State can be fairly and properly represented. The Committee seem to have taken this into consideration. It is proper that the proposed Committee should, in the first instance, take up this whole subject, and if they find their labors too arduous, they can ask this Convention to relieve them of a portion of their duties, and they can, at any time, report upon any particular subject which they may have fairly considered, or report in part and not in full; they can make sub-committees, and it is very proper that this whole subject should be left to them. As to what course I shall take upon any of these questions, I do not propose at this time to commit myself; there is no question of general interest within the bounds of the State, in which I have not an equal interest with every other citizen. Every citizen should have an interest in internal improvements, education, judiciary, and every question that may come up properly before this Convention, and I hope that in the construction of the committees every interest will be considered and represented; that the proper persons will be put upon them, without reference to their predilections for or against any proposition, either of the present Constitution or any proposition which may be submitted for the consideration of this body. I hope, therefore, we shall adhere strictly to the report of this Committee, and then we can proceed with the legitimate duties for which we have been convened.

Mr. RATHBUN—Mr. President, the object, as I understand, of the motion made, is purely in reference to the division of labor without attempting to interfere with the direction of the business or to interfere with anything that is necessary in order to give to any committee control of the entire subject. But the question is one which affects the interest of this Convention in reference to the time which will be necessary to be consumed by the committee in the investigation of the subject matter to be referred to them. Now, sir, I propose to look for one moment at this section No. 9, and call the attention of the gentlemen to it to show that it embraces a great variety of topics, and an immense amount of labor. As it embraces the finances of the State, and takes in that whole subject, I omit the canals, in the reading, because I propose to show, and call the attention of the Convention to the fact, that it has got an immense amount of labor without reference to that question. First, finances; second, the public debt; third, the revenues, including all revenues derived from the canals and all other sources. Every branch of revenue is to be left to that committee. Fourth, expenditures of every character and kind; fifth, the taxation of the people for all purposes and the amount. All these subjects are committed to that committee. And in addition to that, there is also the subject of the restrictions upon the power of the Legislature in regard to expenditures. I ask, gentlemen, in looking at these subjects which I have read whether it would not be asking too much of that committee to take the whole amount of that labor upon their hands and ask this Convention of one hundred and sixty members to sit here and wait day



after day and month after month in order to obtain reports upon which they can act. Now the claim is, that superadded to this shall be the canals; then the revenues and all matters connected with it. They are not content with that but desire the canals. For what? What does the Committee on Finance want with the canals when they have the consideration of the revenues to be derived from them? They have entire charge and control of that subject. What business I ask, have they with the canals themselves in addition to that? Upon the question of improvement and enlargement, I am very much disposed to wait until we get something to make improvements or an enlargement with, before we lay any more taxes upon the people. I am not much in favor of that until some one can show me how we are going to pay for it. Therefore, in my vote I want it to be distinctly understood that I am not voting in favor of enlargement at all, but I propose to divide this question as a matter of economy of time, and as an equitable division of labor among the members of this Convention. I am not disposed to wait all summer until the election comes, for a committee to work out the whole labor of this Convention, while there are plenty of gentlemen here who are willing to take part of the labor. The question is clearly divisible. The amendment proposes simply to take the question of finance and give it to one committee, and take the question of the canals and give it to another one. If they do not agree, there are a good many gentlemen here who know how to amend and improve and make things harmonious. If not, we had better refer the matter to sixteen gentlemen, and let them dispose of the case, and the rest of us may then be profitably employed at home. I am in favor of the amendment, because I am in favor of dividing the labor. It will facilitate our labor, and allow us to go home without waiting here until after election.

Mr. MASTEN—It is with great diffidence that I differ from the report of this committee, for I have no doubt that they have bestowed great care, intelligence and integrity in the distribution of our labors. I somewhat, sir, regret the line of argument that has been adopted on this occasion; I regret that the merits of the subject referred to have been considered. I do not propose, sir, on this occasion to say one word as to whether the canal should be enlarged or not. But I find, sir, that two of the greatest subjects upon which we are possibly to act are combined together and referred to one committee. The subject of finance is a subject which must engage our attention; it is a subject which will give abundance of labor to any committee that may have it in charge. But, sir, we have in our midst public improvements vast and great, that attract the attention not only of our country, but attract the attention of the world, and I have been surprised, sir, that this committee have not deemed so important a subject as this entitled to a separate committee. It is upon this ground that I shall vote for the amendment. I think, Sir, without reference to what is to be done in respect to our public improvements, that the subject is so great that it should have a committee of its own, and, I think, that not only our own people, but those who live beyond in the far west will be surprised that this

Convention have not given to that subject a separate committee. It is true that these committees will, to a certain extent, have to consider the same questions; but, nevertheless, the two subjects are so distinct and important in other particulars, that it seems to me a separate Committee should be appointed in respect to the canals.

Mr. CLINTON—Mr. President, perhaps my vote on the proposition of the gentleman from Erie [Mr. Hatch], and my vote on the proposition now pending are guided more by feeling than by anything else. I am satisfied. Mr. President, that however our committees may be constituted and whatever the division of labor may be, they will be filled by gentlemen who will deliberate fully upon the subjects committed to them; and I am satisfied that whatever a committee may do, or may omit to do in the performance of its duty, this Convention will not separate until it has fairly and fully discussed every proposition for a Constitutional amendment of the least importance to the people of this State. Now, Mr. President, it does seem very strange to me, and I speak it as a matter of feeling, for this Convention to hesitate for a single moment to give the canals a committee of their own. There is more than a financial question involved in the subject of the enlargement of our canals. Why, sir, I am unwilling for one to say that a proposition, involving such momentous considerations, should be sent to, what will be known by the world, as a Committee on Finance. I am unwilling that a committee so called and which is expected only to work out pecuniary results of this, that, and the other matter, should have the sole and entire dealing with the canals of this State. Sir, the canals are the glory of this State! They have been the very foundation of that prosperity which makes us proudly eminent among our sister States. When you are passing upon the question of the enlargement of the canals, you are passing upon the question as to whether this glorious State shall fulfil to the very terms the promises which she held out to the government, to the unbroken West, and to those who flee from oppression abroad and come here where they can enjoy freedom; and whether this State will to the utmost of its strength, so far as is consistent with its own good, to enlarge and keep open this great highway, which has made the Northwest a sisterhood of States, and which has given to our country that strength, without which, the base rebellion of the South would have been successful. I say to you, Mr. President, in my humble opinion, the prosperity of this State, the great question whether the cities and villages which have sprung up along the banks of our canals, shall wither away like Jonah's gourd, or whether they shall gain strength and double and quadruple their population, and whether the value of our land shall continue to rise and enhance—that these are the issues which are involved in the question of the enlargement of the Erie Canal, and I am not willing to send that question to a committee which I am compelled to call a Committee on Finance. No, sir! Do as all our legislative bodies do; give the canals a committee of their own. There is something sir, far more precious than money—honor and glory—the great question whether this State



shall vindicate her motto and go higher like the rising sun. All these are involved in the question of enlargement, and I therefore pray you, if it be consistent, and I think it clearly is, with the due investigation, not only of our finances, but of everything else, for the honor of the Convention itself, to give our canals a separate and independent committee!

Mr. PAIGE—It has been quite impossible for me to conceive how the merits of the question of the improvements of the canals can be involved in the simple question of reference. The whole State is in favor of the canals. The people are in favor of their preservation, and in favor of their improvement. The simple question is a question of reference. It seems to me that the gentleman is mistaken in reference to the multifariousness of the duties imposed upon the Committee on Finance. The term finance is generic. It is a comprehensive term; it embraces the public debt, expenditures, taxation and revenue. They are all one subject only—the subject of finance. The revenues embrace the revenues of the State; not only the revenues from the property, other than the canals, but anything created by the property of the State, forms a part of the revenue of the State. Our difficulty has been in separating the canals from the revenue of the canals. Certainly the revenues from the canals are embraced within the legitimate duty of the Committee on Finance. The question of the canals involves not only the question of revenues, but the question of expenditures. It is difficult to make the separation. The Committee of Sixteen devolved upon the Committee on Finances the consideration of the canals in so far as the subject involved expenditure. It does seem to me that the debate has been extended beyond the merits of the question. The merit of the further enlargement of the canal is not involved here, and I, therefore, hope the report of the committee will be adopted.

Mr. LAPHAM—It is due to this question that I should state that this is the only question which was regarded of sufficient importance in the action of this committee, to put to the decision of a test question. It was carried by the vote of a majority. The minority, of which I was one, did not deem it necessary to present a report, for the reason that we intended to refer the matter to the judgment and intelligence of the Convention. I was myself in favor, in the committee, of leaving the subject, as proposed by my colleague from Ontario [Mr. Folger], because I believe that the subject of the canals should go to the Committee on Canals; and a controlling reason with me is this: That the question of enlargement is necessarily bound up and involved in the question of canal management. There can be no enlargement of the canals without involving the question of their use in the mean time. And that full subject properly and legitimately belongs to a single committee. I shall, therefore, vote for the amendment.

Mr. DUGANNE—I suggested that this might bear somewhat of the character of a test question. I did so because, in my mind, it seemed to me that we were to pass upon the question of whether it were best to take from the Committee on Finance all purview over the question of canals, and leave the canals to a special committee, or to

a committee devoted entirely to canals, or whether we should allow the Committee on Finance to work upon this subject of canals in conjunction with the great financial interests of the State. The canals are or are not a source of revenue to the State; they should be, or should not be in the future, a source of great revenue to the State. Taking this view of the question, it seemed to me eminently proper for the Committee on Finance to consider the subject of the canals in its financial character, in conjunction with the subject of the other institutions and interests of the State, financially. I see no reason why there should be any conflict between the Committee on Canals, if you please, with the powers which have been given to the Committee on Finance. The Committee on Canals will consider the subject and probably report sooner than the Committee on Finance will—I mean the general subject—and we shall have such information and such suggestions as they choose to give us, to guide us in our consideration of the subject of canals. Then, afterward, when the Committee on Finance, in its broader view of the vast interests connected with the financial department of the State, shall bring in its report, we shall be competent to have determined by our previous investigation, what we shall do with regard to the report of the Committee on Finance, upon the subject of canals. I see no conflict at all in the apportionment of the powers and duties.

Mr. SEYMOUR—I should not trouble the Convention with a single word, after the very full debate that has been had, but for the fact that some gentlemen who have spoken have seemed to look upon this question as a test question, and it has been intimated that gentlemen who are to be considered in favor of our system of canals, and their improvement and extension, will be supposed to vote for a special committee on the subject. I have always been a friend to our system of internal improvements. I hope to be able in this Convention, before it shall close, to show myself to be a consistent friend hitherto, and to satisfy all that I shall equally friendly to them in the future. I do not see that the question is involved at all in the decision which the Convention is now called upon to make. I agree with my friend that the question of finance seems to cover the whole ground, for it is perfectly plain that all that is contemplated by the most conservative and most extreme friend of the canals must, after all, come back to the financial question; and although a member of the Committee of Sixteen which submitted this report, I was, in the committee, disposed to go with my friend from Ontario [Mr. Lapham]; yet upon a full review of the question, and seeing its bearing upon the question of finance, I am disposed to adhere to the report of the committee, not committing myself thereby to anything that may be deemed hostile to our noble system of canals. I shall therefore support the report of the committee.

Mr. BICKFORD—Mr. President, I wish to say but a single word. It is not only the question of the improvement and enlargement of the canals that is involved in this matter, but there is, from what I have heard and seen since I came to this Convention, a proposition to come before it to sell or lease the lateral canals, if not the Erie ca

also. I wish to say that although I voted against the proposition of the gentleman from Erie [Mr. Hatch], to include the subject of improvement of the canals in stating the duties of the committees, yet I am unwilling that the subject of leasing or selling the canals—either the lateral canals or the Erie canal—shall be considered merely as a question of finance, or merely in a financial point of view. I shall therefore sustain the substitute of the gentleman from Ontario [Mr. Folger].

The PRESIDENT then announced that the question was on the substitute of Mr. Folger.

The ayes and nays were called for, and a sufficient number seconding the call, they were ordered.

Mr. HAND—I shall vote for the amendment offered by the gentleman from Ontario [Mr. Folger]. I do not suppose thereby that I am voting on a test question. I cannot see how the subject of the enlargement of the canals is legitimately before us. It is simply a question of expediency to facilitate business and carry it rapidly forward. The question seems to me like a very simple one indeed, looking to the appointment of a committee on finance to consider the subject of finances in all its bearings everywhere—the financial question connected with our system of education, connected with our State Prisons, connected with everything with which finance is associated, and then a Committee on Canals to give us everything that they can ascertain with reference to the interests of the canals in all their bearings, and make that a legitimate subject of inquiry, disassociated from everything else. If they choose to recommend the enlargement of the canals let them give us the reasons why. Let some friend of the enlargement be on each committee who may state to us the reasons for the conclusion. Both committees necessarily will have to consider some of these financial questions. These questions will cross and interlace together. They are not to be decided by piecemeal. The reports of all the committees will be before us, and when they are spread out before us, with the liabilities of the State, to which gentlemen have alluded, then the question will be whether, necessary as an enlargement or improvement of the canals may be, we shall incur the expense for it—or whether we shall do wisely to recommend it. If each committee has distinctly had the subject before it it will have a fuller investigation than it otherwise would have if you connect the interests of the Canal with the financial interests of the State, in the considerations of a single committee. Why not put in the subject of State Prisons, and of general education, which have financial aspects in which they may be considered, in charge of the Committee on Finance? The absurdity of the thing is apparent to my mind in mixing up matters which should be considered separately, however much they may be associated with financial considerations. I think that all these interests ought to be considered in their bearings upon one another. I will not pursue these remarks, but it seems to me that we should facilitate business and simplify the whole matter and make it clearer to the minds of every member by separating these subjects which do not necessarily belong together.

Mr. FLAGLER—Mr. President: If this question now pending, is as important as this long debate now implies, a little reflection, perhaps a little slumber, will be of service. With the view of testing the sense of the Convention, I move that we now adjourn.

The question was put on the motion of Mr. Flagler, and it was declared lost.

Mr. VERPLANCK—I do not rise to make more than a single suggestion; to appeal to the justness and fairness of this Convention. The question of the canals is one of the most important questions that will come before this body, and in forming the committee upon it with reference to the work of this body, the committee should be formed, of course, with a majority of the friends of the canals. It has been said by the gentleman from Schenectady [Mr. Paige], that every body is friendly to the canals. That is a mistake; because I know that there is a considerable body of men in this State who advocate the selling of the canals. I suggest, therefore, that it is fair in forming these committees for the purpose of apportioning the work, that there should not be put upon the Committee on Canals, men who have some peculiar views in regard to the expenditures of the State and the restrictions of the Legislature in reference to those expenditures. It is a little thing for this great interest, to ask that the Convention shall give them a committee on this subject, the majority of whom shall be friends of the canals. I ask this from the fairness and justice of this Convention.

Mr. SILVESTER—I do not consider that by the adoption of the amendment of the gentleman from Ontario [Mr. Folger], the Committee on the Finances of this State will be at all precluded from considering the subject of the canals, in connection with that of finances. After that committee have given their best care and attention to many other questions that are involved in that subject—the public debt, its payment, providing means of payment, the revenues of the State, the expenditures of the State, the great question of taxation—after these have been considered, if there is any time for that committee to devote to the question of the canals and to the financial questions connected therewith, they can consider them and make a report. They will not be precluded by the amendment of the gentleman from Ontario from pursuing this course. But, sir, it seems to me, with all due respect to the Committee of Sixteen, and the time they have undoubtedly given to the report they have submitted, that it has given a very small place to such a great interest as the canals of this State, when they are placed in only two small sections—in Committee No. 9, in connection with the financial question of this State, and in another section confined entirely to the superintendence and management of the canals and the officers who shall have charge of them. Why, sir, there is no interest in the State, perhaps, greater than that of the canals. There is no other interest in the State which, perhaps, has so much added to our greatness in times past, and which holds out so great a prospect of greatness for the time to come; and yet almost every other class of interests in this State has a separate com-

mittee. Cities have their committee; currency and banking have a committee; counties, towns and villages have a committee; State prisons have a committee; the pardoning power has a committee; the militia and military officers have a committee; education and the funds relating thereto have a committee, while none has been accorded to the canals. Now it is said that the question of finances is interwoven with this question of the canals, and therefore it is proper it should be considered by the Committee on Finance. Why sir, is not the financial question also interlaced and interwoven with the question of the judiciary, with the question of corporations, with the question of State prisons, with the question of militia and military officers, and with the question of education? It is connected with all these separate interests, yet upon each of them, a separate committee is to be appointed by the President of this Convention; while upon this great interest of the canals, there is to be no separate committee. I submit sir, that it is injustice to this great interest, that it is injustice to the people of this State, that it is injustice to the past history of the canals, that it is injustice to the associations that are connected with those interests, that they should not have at the hands of the Convention assembled to deliberate upon the interests of the State, and form a Constitution which may last for years to come, and under which it may increase in greatness and glory—a committee which shall consider the whole subject of the canals. This Committee on Finance will be so much involved in questions connected with taxation, the basis of taxation, and the manner of regulating taxation, and providing for our State debt, that they will not be able to investigate many subjects which cluster around the subject of the canals. Sir, the canals are a great interest—an interest upon which the fortunes and welfare and prosperity of the State depend almost as much as any interest, which will be brought before us for our consideration, and I hope and trust, therefore, that the amendment of the gentleman from Ontario [Mr. Folger], will prevail.

Mr. CONGER—I shall not trespass upon the time of the Convention, having spoken on the question on the previous motion, but I wish to draw the attention of gentlemen present to this consideration, as there seems to be some expectation that upon the vote now to be called there will be a change which will make the former action of the Convention null and void. I wish to say that it would be infinitely better to reconsider the vote on the amendment of the gentleman from Erie [Mr. Hatch], as it seems to me, than to adopt the pending substitute. In adopting this substitute we do this thing: We propose a committee on the finances of this State, and we sequester from the consideration of that committee the chief property of the State canals, and leave the Finance Committee to look to all the other property, consisting of the salt works and things of that kind. I say that it would be infinitely preferable to move a reconsideration of the vote on the amendment offered by

the gentleman from Erie, than to undertake at this day, to perform the play of Hamlet with the Prince of Denmark left out.

The question was then put on the substitute of Mr. Folger, and it was declared lost by the following vote:

**Ayes**—Messrs. Alvord, Andrews, Archer, Axtell, Baker, Beckwith, Bickford, E. Brooks, E. P. Brooks, Case, Cheritree, Clinton, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Farnum, Ferry, Field, Folger, Fowler, Francis, Frank, Fuller, Gould, Gross, Hadley, Hand, Hatch, Hitchcock, Hitchman, Huntington, Krum, Lapham, A. Lawrence, Lee, Loew, Masten, McDonald, Merrill, Merwin, More, C. E. Parker, Pond, Potter, Prindle, Prosser, Rathbun, Reynolds, Rogers, Root, Rumsey, Silvester, Sherman, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Tucker, Van Campen, Verplanck, Wakeman, Weed.—67.

**Noes**—Messrs. A. F. Allen, C. L. Allen, Ballard, Barker, Barto, Beadle, Beals, Bell, Bergen, E. A. Brown, W. O. Brown, Cassidy, Champlain, Chesbro, Church, Collahan, Comstock, Conger, Cooke, Daly, Develin, Endress, Flagler, Garvin, Gerry, Graves, Greeley, Hale, Hammond, Hardenburg, Harris, Houston, Hutchins, Jarvis, Kernan, Kinney, Larremore, Law, A. R. Lawrence, M. H. Lawrence, Livingston, Lowrey, Ludington, Mattice, Merritt, Morris, Murphy, Nelson, Opdyke, Paige, Parker, President, Robertson, Roy, Russell, Schell, Seaver, Seymour, Sheldon, Strong, Tappan, Tilden, Van Cott, Wales, Wickham, Williams, Young.—67.

Mr. FOLGER moved a reconsideration of the vote; and that the motion lie on the table.

Mr. MERRITT demanded the ayes and noes.

Mr. DEVELIN—If I understand the rules adopted yesterday, the motion to reconsider must lie upon the table until to-morrow.

The PRESIDENT—The gentleman from Ontario [Mr. Folger] has himself moved that it lie upon the table.

Mr. DEVELIN—But by the rules, as I understand it, that motion must lie upon the table.

The PRESIDENT—The Chair has not the rules before it.

Mr. DEVELIN—I rise to that point of order, sir.

Mr. E. BROOKS—I also rise to a point of order.

The PRESIDENT—The Chair has not the rules before it, but it thinks that the rule as adopted was different from that as reported by the Committee.

Mr. DEVELIN—The rule adopted yesterday, as I understand, was the rule existing in the Senate, moved by my friend from New York [Mr. Tilden].

The PRESIDENT—The Secretary will read the rule, so we can all understand it.

The Secretary proceeded to read the rule.

The PRESIDENT—The motion will lie upon the table.

On motion of Mr. SMITH the Convention adjourned.



FRIDAY June 14. 1867.

The Convention met at 11 A. M.

Prayer was offered by Rev. W. H. ALDEN.

The journal of yesterday was read by the Secretary and approved.

Mr. E. BROOKS—I am charged with a memorial of The Universal Peace Society of the United States, so called, to present to this Convention. I suppose, appreciating the amiable character of its members, and the peaceable disposition of the Convention, they respectfully pray as follows :

THE UNIVERSAL PEACE SOCIETY

*To the Convention assembled to amend the Constitution of the State of New York :*

At the meeting of the Universal Peace Society held in the city of New York during the 8th and 9th of May, 1867, it was

*Resolved*, That through the New York members we petition for such amendments as will remove the causes of war so far as under governmental control; and, at the same time, to abolish all provisions for war itself, by not legalizing that which is inhuman, unjust and unchristian.

*Resolved*, That Isaac Winslow, Esq., of New York City is hereby appointed to represent the New York members and report the above resolution.

On behalf of the Society,

ALFRED H. LOVE,  
*President.*

Philadelphia, May 22, 1867.

As there is no proper committee to refer a memorial like this, I move to lay it upon the table.

There being no objection the memorial was laid upon the table.

Mr. SILVESTER—I desire to give notice that on Wednesday next (June 19,) I will move to amend Rule 33 by adding :

“*Null.* Such ladies as may be invited by any members of the Convention—but such right of invitation to cease whenever the sofas are filled.”

Mr. FOLGER—I call from the table the motion made by me yesterday to reconsider the vote by which the substitute offered by me to sub-divisions 9 and 10 of the report of the Committee of Sixteen was lost.

The PRESIDENT—The Chair will inform the gentleman that under the rules no motion is required. The pending question is upon the substitute offered by the gentleman from Ontario [Mr. Folger,] yesterday, which was an amendment to paragraph 9 of the report of the Select Committee of sixteen.

Mr. HALE—I voted yesterday, Mr. President, against the substitute which was offered by the gentleman from Ontario, [Mr. Folger,]. I voted in that way although it struck me that as an original question I should prefer the arrangement as proposed by him to that suggested by the committee, for the reason that I felt disinclined to aid in any way, or do anything to aid in disturbing or disarranging the plans suggested by it. I felt then, as I do now, that the action of that committee embodying as it does some of the ripest wisdom and legislative experience of this Convention, was entitled to the greatest respect. Upon further reflection, however, I am constrained to come to

the conclusion that the change suggested by the gentleman from Ontario, [Mr. Folger], ought to be made. As I understand the effect of that change, if made, it will not be to deprive the Finance Committee of the consideration of any financial question with reference to the canals. Subdivision 9, as amended, will then give to the Finance Committee, and make it their duty, to consider “the finances of the State, the public debt, revenues, expenditures and taxation, and restrictions on the powers of the Legislature in respect thereto.” In case, therefore, any question arises in relation to the canals, which is essentially a financial question, and which involves, as a leading subject, a question of finance, if I understand the effect of the motion of the gentleman from Ontario [Mr. Folger] it will still be properly referred to that committee, and will be a proper subject of investigation by it. Then the proposition is, after striking out those words to make Committee No. 10 a committee upon canals solely. I need not say, Mr. President, that my course upon this question has no reference whatever to the merits of any proposal whatever that may be made in relation to the canals. I do not consider this question as in any way involving or affecting the merits of any such proposal. But if such proposals are to be made, after they are made upon this floor and are discussed, and after I have had an opportunity to investigate and reflect upon the subject, it will be time enough for me to form a judgment in relation to such proposal, and I certainly do not wish now to express or intimate any opinion until such investigation shall be had. Neither do I agree with the remarks of the gentleman from Rockland [Mr. Conger], that the passage of a vote of this kind will be a virtual instruction or intimation to the President of a wish on the part of this Convention that a majority of the friends of any particular line of policy should be put upon the Canal Committee. I do not understand it to be the province of this Convention to make any such intimation or suggestion to the President in regard to the duties which are confided to him. I shall, therefore, for the reason stated, vote for the reconsideration, and for the substitute proposed by the gentleman from Ontario [Mr. Folger], reserving all opinions upon any question that may arise in relation to the canals until such question comes before us properly and legitimately for discussion and action in Convention or in Committee of the Whole.

Mr. GROSS—I cast my vote yesterday with a view of having a division of the Committee on Finance and Canals on the ground of expediency. I thought that altogether too much labor had been cast upon that one committee. Since, however, the question of canal enlargement has been drawn into that discussion, I feel constrained to change my vote, not by reason of any opposition to the enlargement, but because I deem this substantially, nay, pre-eminently a question of finance. In these debt accumulating and tax-ridden days we all understand and appreciate the great and valuable services rendered by our canals, but since they are not capable of doing all the business or carrying all the freight of the trading community, I think we had better look at both sides of the question of enlargement. Mr. Presi-



dent, I shall therefore change my vote to-day with a view of having the committee composed substantially as reported by the Committee of Sixteen.

Mr. T. W. DWIGHT—I intended, sir, to have made some remarks on this question yesterday; but as the Convention were quite weary with discussion I refrained. I desire to say this morning a word or two, in regard to the reasons which induced me to vote for the substitute of the gentleman from Ontario [Mr. Folger], although I voted against the amendment of the gentleman from Erie [Mr. Hatch]. It seems to me, sir, that it is not a question of finance. The gentleman from New York [Mr. Tilden] made a very strong impression upon this Convention by putting it in that form, and the illustration which he gave was in substance that, when a man commenced to build a house or do other work of that kind, his first point was to count the cost. I admit, sir, that in cases of that kind where a person is preparing for himself a matter of convenience, he seeks to count the cost; but when a man is preparing for himself that which is to promote his honor or to advance the honor of his family, or to do some other thing in which he feels a most deep and abiding interest, then the first question will be whether he will do the thing, and the second will be whether he can find the money to do it. In other words, the question of convenience must give way, and the only question is one of possibility whether he can raise the funds. And so when nations have great works to do, when they are contending for rights, for the continuance of their empire, or when they are defending themselves, the question is not whether they can raise the money conveniently, but whether they can raise it at all. They make the question of finance a subordinate question to the question of empire, or to the great question of defense. Now, I am of opinion that this is one of those questions which we have before us, and by-and-bye I shall attempt to show why I think it is. But before I get to that, I wish to say a word in regard to this point, I do not think that the question of finance is involved in this subject in any form. If at all, it is purely a secondary matter. What do the canals of New York do for us now? As I understand they pay into the general fund \$350,000 as a sinking fund, and \$200,000 for the necessary expenses of the government. Half a million of dollars, sir, would be a sufficient fund out of which to increase and promote the enlargement of this canal—the Erie canal—the estimate not exceeding eight millions. I, therefore, feel no difficulty on that point. If it were an important thing for us to have the canals enlarged, the means of enlarging them could easily be obtained and conveniently obtained. Even, sir, if it were necessary to have a tax to accomplish the purpose, it would take but one-third of a mill to pay the interest. The Comptroller informs us in his report that the assessed value of the property in this State is \$1,500,000,000, and if we take half a million as a tax, I think you will find it but the third of a mill. What is that to the State of New York, if the question is one which ought on its merits, to be carried? And now, sir, having reached that part of the subject, I will state why I think this question ought to go

upon its merits. It seems to me, sir, there are two grounds for that; one, because it is a question for the State, of empire, substantially—and the other because, for the whole country it is a question of nationality. Now, in regard to our own State; I have read with great interest the report of the gentleman from Erie (Mr. Hatch), and I would like to see that report answered, because if his statements are true, it seems to me it is of the greatest importance that the State of New York should not lose this vast trade, which the nations, so to speak of the West (for these Western States are substantially nations) are pouring into our lap. I learn from that report that there is a prospect of this great trade going in part through other States, and perhaps going out through the St. Lawrence. I want to hear this question discussed here and examined upon its merits, not subordinate to the question of finance, but upon the great question of the empire, strength and extent of the State of New York. Moreover, sir, I want to see this question also examined as a matter of nationality. We are placed by Providence directly in the path of those Western States to the sea. We hold the key of the gate of commerce; they cannot get out except they pass over the territory of the State of New York. I think, therefore, as a great national question, it is of importance to us, situated as we are and holding this position in reference to those other States, that we should furnish them the facilities for going to the sea; they cannot furnish it by themselves; they cannot pass over the State of New York; they say “we would like to open this great pathway for ourselves, if we had the opportunity, but it cannot be afforded us; that would be trenching upon the sovereignty of the State of New York.” Sir, shall we sit supinely and say that these men shall be driven to go out by the avenues of the St. Lawrence and be exposed to the dangers of the Bay of Fundy, and that we will furnish them no means by which they shall have a free and open pathway to the sea? I, sir, from an early period of my reading was led to look harshly upon those nations who, situated upon the mouth of a river would not permit those who were upon the upper part of the streams to go out freely through that mouth to the sea. I think we are in a measure situated in the same way. These States want to pass over our land. They want to carry their produce in such a way as to reduce the expenses of transportation and to improve the value of their lands. I think they are entitled to it. While I do not intend to prejudge this question at all, for I simply say these things because I want to hear a discussion on the merits, my belief is that if we should put this question properly on its merits before this Convention, stripping it of all arbitrary rules which are found in the present Constitution, and let the canals be self supporting as they undoubtedly will be, let a sinking fund be provided to pay the debt and the interest, and then after these are paid, let the residue of the money go into the general fund, I think we shall see that it is for the interest and pride of the State to have that course adopted, and that our policy will be to reduce the tolls so as to enable the Western States

to develop themselves as fully as is consistent with our prosperity, and return to us the money that we have expended.

Mr. HARRIS—It was not my purpose to say anything further upon this proposition, but after the extraordinary speech which has just been made by the gentleman from Oneida [Mr. T. W. Dwight], I do not feel at liberty to let the question be taken without saying a word. He has presented the question as though this Convention were to determine whether or not the canals shall be enlarged. Sir, is that a question for us to discuss in the determination of what provisions the fundamental law of this State shall contain?

Mr. T. W. DWIGHT—Will the gentleman excuse me for a moment? I intended simply to argue, as I did, for the sake of showing the importance of hearing the question upon its merits. I do not, myself, say that I shall necessarily vote for the enlargement, but I presented these points simply for the purpose of showing the importance of hearing the question in a direct and distinct form.

Mr. HARRIS—It seems to me, Mr. President, in the discussion which occurred yesterday, and in the remarks of the gentleman from Oneida, [Mr. T. Dwight] that we have lost sight to some extent of the business before us as a Convention. What has the enlargement of the canals to do with the alterations to be made in the Constitution? What questions can properly come before this Convention relating to that subject? In my judgment there are but two, and one is as to the means of carrying on this work in case the Legislature shall determine that it is expedient. It is proper enough to consider the financial article of the Constitution in regard to that subject. Now, the trouble with us is that, by the financial article of the Constitution the funds of the State are so tied up and so devoted to other purposes that the Legislature cannot control them for the purpose of carrying on the work of enlargement. Then again, the powers of the Legislature are so restricted that they cannot borrow money for the purpose of carrying on the enlargement. What is needed for that purpose is to open the financial article of the Constitution in such a way as to enable the Legislature to provide means for carrying on this work of enlargement. In my judgment that is all that this Convention can do. I am in favor of such a change in the constitution in that respect. But sir, it is a question that belongs exclusively to the Finance Committee of this Convention; it is, how shall the financial article of the Constitution be changed so as to allow the Legislature, if they shall think it expedient, to go on with this work of enlargement? Sir, it is a mistake of the gentleman to suppose that because we desire to refer this to the Committee on Finance, we are, therefore, necessarily hostile to the work of enlargement. For one, I deny that there is any such inference to be drawn from that position. The only question which this Convention has a right to consider and which is legitimate to the purposes of this Convention is, how shall the financial article of the Constitution be changed so as to allow the Legislature to secure the ways and means of providing for the enlargement? This is all that should be

done in the modification of the Constitution in this respect. There is one other subject which ought to be considered by the Legislature, (and which is provided for by the 10th committee), and that is a new subject and entirely different from this. It relates to the administration of our canals. There are those who think, and I think I may say I am of that number, that the canals might be administered in such a way as to secure a larger revenue with less expense; that question may be considered by a committee, and a proposition of some modification of the Constitution, in that respect, may be demanded in reference to that. We have another provision in the Constitution—a very slight one—which provides for the appointment of three canal commissioners. These are elected by the people as State officers, but the Constitution contains no provision in relation to their powers and duties. It has been supposed, and I am inclined to think myself, that a change in that respect might be desirable. And with a view to that—the administration of the canals and the officers to be charged with their administration, and the powers and duties of the Legislature in reference to that subject—it has been thought fit to raise a committee. Now, sir, what more is there for this Convention to do than to consider this financial question, and then to consider this question as to the administration of the canals? And it is in reference to that that this division of the labor among these committees has been recommended.

Mr. E. BROOKS—This question has assumed so much importance that I feel called upon in view of what has been said in this Chamber and out of it, at least, to give a reason for the faith which is in me, so far as relates to my vote. Sir, this subject of the canals is properly upon its merits before this Convention. I hold a document in my hand which by the last Legislature on a full vote in the Lower House, was referred to this Convention. It relates to one of the greatest subjects which can possibly come before this body, and that is, the canals of the State. I represent, in part here, a constituency who have little interest in the canals; perhaps, less interest in them than in any other section of the State. And I remember, sir, in this connection, that though the section I represent has little material interest in the results of the canals, yet including the county of Westchester and the Southern part of the State below the county of Westchester, some four counties of the State of New York, pay one-half of the immense taxes of the State. It is proper, sir, it seems to me, after the discussion which has been had, to enter briefly into the merits of the question before us. I want one Canal Committee properly and simply to discuss thoroughly every question which relates to the canals of the State, and when they bring in their report, I want to know to what extent my constituents are to be taxed for this improvement. Sir, when there was to be an extension of one of our canals, as was recently made of some 37 miles, an estimate was made that it would cost some \$800,000, and the result proves that it will cost some \$2,500,000; and the four counties to which I allude are to pay \$1,200,000 of the tax without receiving one dollar's benefit from it. I want to know something

in reference to this committee; and, although I have great confidence in the Chair, I desire that this question shall be so ventilated preliminary to the appointment of these committees, that there may be some development of opinion in reference to the question itself. I think, sir, with all respect to those who may differ with me, that the Finance Committee, so-called, will have abundance of labor without interfering directly or indirectly with the canal question itself. Sir, in the Congress of the United States as the gentleman who is Chairman of the select committee [Mr. Harris], very well knows, and in the lower house it is an established rule that, there shall be a Committee on Finance, to wit, a Committee of Ways and Means, and that there shall be a Committee on Appropriations. Both committees are appointed with reference to the expenditures of public money, but they do not necessarily conflict with each other. Neither need the Canal Committee and the committee charged with the finances of the State necessarily conflict with each other. Sir, I want to know, too, just at this stage of this Convention, so far as it is proper to give any development of opinion by discussion, what may be done and what can be done. If this enlargement of the Erie canal, which has been alluded to here, is to cost \$12,000,000 as has been reported, or \$10,000,000, or even \$8,000,000, I should like the fact to be known, and if, upon consideration, the Canal Committee, can demonstrate by a report to this body, that the surplus revenues of September, 1866, amounting to some \$4,824,000, will, as estimated, amount to \$6,000,000 in 1867, and amount to \$7,019,000 in 1868, I want it known; and if the committee can demonstrate any such fact as that, and this canal can be enlarged without taxing the people directly or indirectly, beyond their present burdens of taxation, why then, so far as is proper at this stage of the proceedings, I am not unwilling to commit myself to the result, albeit, as I have said, the constituency which I represent have very little comparative interest in this question. Sir, I was a little surprised yesterday at the vote upon amendment moved by my friend upon my left [Mr. Hatch]. I saw no reason in the world why that should not be adopted; here was a report proposing to raise a committee in regard to the care and management of the canals and my friend moved to insert the word "improvement." I saw no sinister purpose in that amendment, and I perceive none now. I do not believe there is any. But whether there be any or not, in an intelligent body like this, I am sure we cannot suffer from the abundance of information which may be received from either of the two committees. The poet tells us that

"Through all the dark and troubled night,  
The prayer of Ajax was for light."

And we want light—light upon these intricate questions connected with the canals of this State, and, as I have said already, the Committee on Finance will have abundance of labor to perform upon these great questions relating to the property of this State, and to the enormous taxation of this State, if they can to show how this State can pay off their debt of \$51,000,000, which to-day rests upon it as a State, and pay off that

\$85,000,000 of other debt, which rests upon the towns and counties of this State. Sir, one reason more and I will take my seat. I hold that, as a parliamentary action, the friends of any great measure have a right to be represented in the majority upon that committee which is to consider it; and after the admission of the gentleman from Ontario [Mr. Lapham] yesterday, that the select committee were not united in their action, but as I understand were very materially divided upon this precise question, it has seemed to me as an act of parliamentary justice, they have a right to have a committee representing the canals of the State.

Mr. STRONG—My impression is, by the zeal which has been shown in the discussion of this question, that the object of the mover of this amendment is to give some encouragement to the idea, that we favor the enlargement, or a very considerable improvement of the canals. I am not one of those who are in favor of that project, and I will state very briefly the reasons why I cannot favor it, and as it is possible that I have not heard very distinctly, I may in the few remarks I have to make repeat some observation which has been made by those who have preceded me. I admit, sir, at the outset the project of the canal was a glorious one, and I admit furthermore that it has conferred immortal honor upon one of its principal projectors, the father of an honorable delegate in this Convention [Mr. Clinton]. At the time when the project was first brought forward, the people of that part of the country which I represent were not in favor of it. They supposed the benefits would be local, and there would be no benefit conferred upon them, and the only reason why they were led in the end to acquiesce in it, was the promise made at the time that the canal would eventually pay for itself; would pay not only the entire expense, but would also be a source of revenue after it had been paid for. There was some reason to suppose, sir, that that they was correct; but it was very soon discovered that they were laboring under a mistake. In the first place, the construction of the canal was not economically managed at the outset, and perhaps there may have been some frauds in the contracts which were made then, and undoubtedly there have been many in the contracts which have been made since; but when it was discovered that the canal, as originally constructed, would not pay the debt which was incurred in its construction, then their project was for an improvement of the canals, which would exhaust not only the fund which the canal had raised, but would also run the State in debt to a very considerable extent. They went on, sir, until there was a law passed by the Legislature for an increased debt for the improvement and enlargement of the canal by raising some nine millions, of dollars, and which I think eventually amounted to some twelve millions. The law came before the general term of the Supreme Court in the Second district at which I was then sitting, and it was there pronounced by us unanimously, to be unconstitutional. The proposition was then changed by the Legislature and submitted to the people for their approval. The promise was made then, or at least that was (1)



very general acceptance of it, that when that improvement was made, no further improvement would be called for until the canal had paid for itself, and probably very many of those who voted in favor of it, voted upon that supposition. It seems however, that the friends of the canals are not satisfied with the extent to which this improvement is carried, but they wish to have still further improvement, and we cannot tell how far they intend to go. There has been a proposition that the locks in the canal should be very considerably improved at a very heavy expense, and there has also been a proposition that the canal should be deepened in such a manner as to enable it to transport goods much cheaper than they can now, that is, by using larger vessels, and if this proposition should be carried there is still another one behind which I think will be urged with equal zeal, and that is, that there should be a ship canal—a canal which can be navigated by steam, and by ships, and by vessels of war to the lake. I think we should, as far as in our power, put a stop to these propositions of improvement, until the canal has paid for itself. I am one of those who are very much opposed to extending the debt of the State. At present, it is very heavy, and I do not wish it to be extended by any project which may or may not be successful. The war has imposed a very heavy expenditure upon the State,—that expenditure has undoubtedly had a very beneficial effect, but the debt of the State is very large, and the taxation very heavy, and it bears very heavily upon the people. The proposition was mentioned yesterday, I think, by a gentleman, [Mr. M. I. Townsend] that there should be a new system of taxation in order that the tax upon real estate should not be as burdensome as it is now. A proposition was also made before the Legislature that personal property should be estimated upon its whole value, on the oath of the proprietor. To that I am also opposed. I do not believe it would have a beneficial effect. I believe it would impose a great weight of taxation upon the honest portion of the community, and that those who would give a fair estimate, would have to bear an undue proportion of the tax. There are many people who would probably give a false account, as we know that has been the case with regard to the internal revenue of the United States, where many have given accounts, that could not be relied upon and they thus have thrown the taxation upon the honest portion of the community. I should therefore be opposed to anything of that kind, or any proposition of that kind, if it should be brought before the Convention. We are told that the benefits of the canal have been very general; perhaps they have been, but they have not been universal, and I doubt very much whether the county which my friend from Rockland [Mr. Conger] represents has ever been benefited by it; and I doubt very much whether it has ever benefited the people of the county of Suffolk, in which I reside. I am under the impression, it has created rivals in the principal landholders in the interior of the State, and has had a tendency to reduce the price of the productions of their farms. Still, I would not oppose this

matter upon any selfish consideration; I oppose it upon general principles. There is no question at all but that many of the projects which have found favor in the Legislature of our State have not been of the slightest benefit to the people of Long Island; and whenever any proposition is made for the benefit of the people of Long Island we have always been met by the charge that it was local, and therefore not a proper subject for general taxation. Perhaps it may be true, but that also applies to other projects which may be carried on by the State. The canal is, in some degree itself, a local object, and there are others which have met the approbation of the Legislature which are purely local. I think the case of the Susquehanna Railroad is one; the appropriation to that object is to be a subject of taxation and we have got to pay our proportion of the burden. What benefit is the Susquehanna Railroad to the people of Long Island? None, of course. Then, too, the extension of the Chenango Canal was another project of no kind of benefit to the people of Suffolk County, or Long Island, or the people of the City of New York. There are other projects which have been brought forward, which were certainly of a local character, for which we have to pay. I think, therefore, with regard to any project of the kind now under consideration we ought to pause; we ought not to give any encouragement to the Legislature to go on making extravagant appropriations for the Erie Canal. We are willing the canals should be kept in order; we are willing to pay our proportion of the expense which is necessary in the way of taxes to keep them in order; but we are not willing to go on and extend these canals, and extend them perhaps without any limitation whatever. The Legislature have generally acted upon the principle that might makes right, with regard to these appropriations; whereas, they should have acted upon the principle, directly the reverse of that, that right and right alone, gives might. For these reasons, sir, I feel inclined to oppose this reconsideration. I am not one of those who feel inclined to oppose this canal system entirely, I am willing that all appropriations should be made, that may be necessary without incurring a very serious and onerous debt, and without very heavy taxation upon those people who are not interested. As I have remarked, the people of Long Island have no very general interest in this question, nor have the people in the southern tier of counties. If the taxes are to be made heavier by it, we ought to hesitate before we give any encouragement to the idea.

Mr. PROSSER—I hope the motion for the reconsideration may prevail, and among the reasons why I think it ought to, is, first, the fact that the Finance Committee will still have under its charge a sufficiently large amount of work. The duty of considering whether or not the legislative powers shall be restricted in relation to taxation, can hardly fail, if the subject is wisely considered, to consume some very considerable time of that committee; and, secondly, I think this motion ought to prevail, because the subject-matter of the canals in their entirety is quite sufficient to consume also a large portion of the time of any seven or nine, or fifteen gentlemen of this body for some weeks,



without having anything else under their charge. For these reasons, sir, I hope, without going into detail upon them, that this motion may prevail, and the substitute of the gentleman from Ontario [Mr. Folger], may also prevail. It seems to me that the gentleman from Albany [Mr. Harris], who has addressed the Convention, has undertaken somewhat to limit the powers of this Convention, so far as the fundamental law is concerned, in what they may do, and do wisely, with reference to our canals, without trenching upon or interfering with the province of the Legislature. For in the existing Constitution it is provided they shall have the disposition of the revenues entirely, and say what shall be done with them. I do not perceive, why this Convention may not come to the conclusion to legislate somewhat in the same direction for the future. I think they wisely may without going at all beyond their province. The subject matter of what may be reported from some other committee on this subject is not now properly up. When any committee shall report, if they do, that some improvement ought to be made, or some further disbursement should be made on some of our canals, or several of them, it will be time to consider the subject when that committee shall have shown the necessity for it, and that the means are forthcoming, without taxing the people of this State.. Unless both of these things can be shown, and very clearly shown, they certainly cannot have my vote for any further improvement of the canal. There has been so much said upon the subject, that I will not trespass upon the Convention any further, except to reiterate that I trust this motion may prevail and that the substitute may also be adopted.

Mr. ANDREWS—Mr. President: I do not propose at this late stage of the discussion to obtrude upon this Convention any extended remarks upon the subject under consideration. But, sir, I desire to refer in the first place, to the suggestion which has been made by the honorable Chairman of the Committee [Mr. Harris], who made this report, to the effect that it was not the proper duty or province of a convention like this, to pass upon and definitely determine as to the policy or propriety of the improvement of our canals, but that that matter, after this Convention should provide the ways and means, should be left to the discretion and control of the Legislature. Such, sir, has not been the view of the duties of Constitutional Conventions in this State in the past; because the Convention of 1846, which adopted the Constitution under which we are now living, definitely fixed and determined the policy of the enlargement of the canals, leaving it simply to the Legislature to direct as to the manner and as to the application of the moneys which may be received from the surplus revenues of the canals; and the amendment passed in 1853 extended by peremptory statement, the obligation further to enlarge not only the original canal mentioned in the Constitution, but other lateral canals, which were embraced in the provisions of that amendment. But, sir, it seems to me, aside from the precedent which the Convention of 1846 sets before this Convention, it is eminently proper that a Constitutional Convention like this, in rearranging and reconstructing the structure of our

government, should itself determine the policy and the propriety of the extension and the improvement of our public works, upon which the glory and the prosperity of our State, in a great degree, in the past has depended. And, sir, the discussion of the merits of the question of enlargement, here, is, to my mind, entirely proper and appropriate, as a means of suggesting to this Convention the large and weighty considerations bearing upon the consideration of the subject, which is by this amendment withdrawn from the consideration of this Committee upon Finance. I, for one, have no definite and fixed views as to the policy of the State in respect to the enlargement of the Erie canal. I come here for the purpose of listening to gentlemen more intelligent than myself, upon that subject, then acting as I may, under the obligation of the oath, with such views and such light as I may have, in accordance with what seems to me to be calculated to promote the interests and the honor of our people. Now, sir, this subject, in my judgment, is weighty enough to call for its consideration by a separate and distinct committee, while if this subject shall be withdrawn from the consideration of Committee No. 9, it will leave that Committee also a vast field of labor and reflection, because it will continue to be possessed of some of the most important subjects which will come before this Convention for consideration. The subject of finance, and the related subjects of assessment and taxation, are alone of themselves sufficient to engross the attention of an able and numerous committee during a good share of the session of this body. I am for meeting this question of the enlargement of the canals fairly and squarely by this Convention, when it shall be possessed, through its proper committees, of all the light and of all the knowledge which can be furnished bearing upon the consideration of this question, and to that end it seems to me eminently proper and appropriate that a separate and distinct committee should be raised for this purpose. If my reading serves me, the question of finance was not the one upon which the determination of the question of the original construction of the canals turned. In my judgment, it is not the only question, though an important one, upon which that subject should be determined here.

Mr. HUTCHINS—I did not intend to say another word upon this subject. I should not have risen again had not the honorable gentleman from Onondaga [Mr. Andrews] fallen into what I think is a very grave error, and into which I fear the majority of the Convention will fall if the amendment proposed is passed. The error is this: in supposing that the Constitution of 1846 provided for the enlargement of the canals, or that the great question discussed there was the question of enlargement. Mr. President, the gentleman from Albany [Mr. Harris], the Chairman of the Committee of Sixteen, has stated the position rightly. The Constitutional Convention of 1846 found a large debt existing which had been cast upon the State by reason of and in consequence of the canals. The whole question that came up there was as to the mode and means for the payment of that debt. Hence the provision contained in Article 7, of the Constitution, which provided

that the revenues of the canal should be applied in the future to meet that debt. It is for that reason, and that reason alone, that you cannot separate the discussion of this question from the question of finance any more than the gentleman from Oneida [Mr. T. W. Dwight] could do. He could not speak at all without considering the matter in its financial aspect. No gentleman has uttered three sentences without discussing the question in a financial point of view. No two committees can be appointed, as proposed, without their soon running in the same rut, and discussing the financial question. I think the great question which the Convention has to consider is the care and the management of the property which the State has got, as well as the enlargement of it in the future. I do not believe any gentleman will rise on the floor of this Convention, and say on his responsibility as a member of the Convention, that he is opposed to the enlargement of the canals. We are all in favor of it. We are all agreed in the sentiments that have been uttered with so much eloquence in reference to the greatness, and the glory, and renown, and lustre that has been shed upon the State by our canal system. No one holds in more honored remembrance than myself the memory of that noble man, the father of the honorable gentleman from Erie [Mr. Clinton], to whom we are indebted for this great work of internal improvement. But, sir, unless there is proper care and management of the canals—unless the revenues that come into the coffers of the State are properly applied, the work of enlargement will not progress as gentlemen suppose it will in the future. Therefore, it is, that I desire there shall be a Committee on the Care and Management of the Canals, a committee which, if it does its duty, will have all that it can do during the session of the Convention to prepare and report, a plan by which the revenues of the State shall be honestly, fairly, and equitably distributed. It is because I believe that committee will have all it can do, if it is appointed as recommended by the Committee of Sixteen, that I sustain the report, and hope it will be adopted. And I venture the prediction that if the other course is pursued, gentlemen who vote in that way now will have occasion to regret it in the future.

Mr. CURTIS—Mr. President: There can be no doubt, as the gentleman who has preceded me [Mr. Hutchins] has remarked, that the question of the canals and the question of finance are intimately related. Whether the canals shall be sold, whether they shall be enlarged or whether they shall be retained in their present dimensions, are equally questions of finance. It seems to me that he, in common with several gentlemen who have spoken, has forgotten this very important point, that the principle which has governed the report of the Committee is a principle which fully justifies voting in affirmation on the proposition offered by the gentleman from Ontario, [Mr. Folger]. Entertaining as I do, in common, I presume, with every other gentleman in the Convention, a great respect for the eminent ability of the Committee of Sixteen, I was disposed, as confidently as upon the other matters recommended by them, to support this part of their report. The Chairman of that Committee, if I am not mistaken, informed the Con-

vention that the report was substantially unanimous. That of itself was of very great weight with an inexperienced member of the Convention, like myself. But when the gentleman from Ontario [Mr. Folger,] brought forward a proposition so radical in its character, and which in its nature was consistent with the principle of the report, I waited with curiosity to hear the defence of the report by the Chairman of the Committee [Mr. Harris] in so far as it differed from the proposition of the gentleman from Ontario, [Mr. Folger]. But I have failed throughout the whole discussion yesterday to understand the reason which persuaded the Committee of Sixteen to make the report they have submitted. I have also failed this morning to understand the conclusive character of their reasons from the observations that have fallen from the Chairman of that Committee [Mr. Harris]. The question before us is not a question of the enlargement of the canals. It is not a question of the finances of the State. It is simply a question of the distribution of business; a question of the convenience of the Convention, and how this Convention will most conveniently address itself to the great subject laid before it. When that is determined, we shall be prepared to take up the various subject matters before us. Now in referring to the report of the Committee of Sixteen, I find that very great and substantial interests of this State are by it referred to separate committees. No gentleman will assert that there is any greater interest which the State has than the interest of the canals; but as yet, I confess, I fail to understand why a distinction is made between the canals and the other great interests of the State that will be involved in our deliberations. That they involve matters of finance is true, but every other interest which also involves matters of finance is referred to a separate committee. That being true, and the canal being so great an interest, why should it not have a committee also? I do not in the least, in supporting the substitute of the gentleman from Ontario [Mr. Folger], commit myself to the policy of the enlargement of the canals, and no gentleman who votes intelligently on the subject would vote except with a view to the convenience of the Convention. When I am told that this is a test vote, I decline to accept the interpretation. I presume many gentlemen in the Convention, like myself, are not yet informed of the propriety and justice of the various canal policies discussed in this State, and will await the report of the Committee on Canals to know whether it is proper for the canals to be enlarged, or retained, or sold. And in saying so, I presume I speak the sentiments of many gentlemen in the Convention. I shall, therefore, vote for the proposition of the gentleman from Ontario [Mr. Folger], without in the least committing myself to the question of canal enlargement.

Mr. S. TOWNSEND—Mr. President: The prevailing view of this Convention will undoubtedly be based upon a desire to give to the friends of every great measure which shall come up before it, a preponderating vote in the committee to which it shall be referred. But I consider that no vote upon this question will control any gentleman's action when the Convention shall take up and act upon the subject of the enlargement of the

canals. At the proper time, if nobody else makes the suggestion, I shall move that there be also appointed a committee on the subject of railroads to consider the general interests of the State as affected by them. The railroad interest of our State amounts to over a hundred millions of dollars, and they, to a degree, affect the revenues of the canals. In the Convention of 1846, as I know from personal observation, the consideration of these questions finally came down to a question of dollars and cents. At that time, I learned from personal investigation that a barrel of flour could be transported from Buffalo to Albany, either direct or *via* Oswego, for nineteen cents, exclusive of canal tolls. And it was then a financial question as to how far the tolls went to make the freight amount to fifty cents a barrel which was then charged. In the earlier days of the Legislature of 1840 and 1841, as I recollect, this question of the ability of railroads to carry freight in competition with canals was discussed at length, and it was claimed then, by the railroad interest, that the period would arrive when property would be transported cheaper by rail than by any other mode. When in Europe in 1845, by intercourse with a member of the British Government who was specially charged with the care of the railroads—

Mr. VAN COTT—I rise to a question of order. The question of railroads is in no way before this Convention.

The PRESIDENT—The point of order is well taken; though I believe the gentleman did connect his remarks with the finances of the State.

Mr. S. TOWNSEND—The gentleman from Erie [Mr. Hatch] who first introduced this question has produced a pamphlet, the authorship of which is attributed to him, in which he admits that the present capacity of the Erie Canal is much more than adequate for the business that has been presented to it. If I have not correctly quoted his statement in this regard, the gentleman will correct me. Therefore, any action of this body looking toward to the enlargement of the Erie canal, should refer to a distant future. If we should go on with this consideration (without any regard to the resolution which I introduced as to whether this Convention has been constitutionally called or not, and it appears to be the sentiment of the Convention that it has been), I shall, at some future day, propose that the restriction in the present Constitution upon sale of the canals, shall be modified or removed. If this whole subject shall be referred to a canal committee, I trust they will institute a correspondence with officials in the State of Pennsylvania, which State has sold its canals for fifteen millions of dollars, to ascertain what is the solid judgment of the community there with reference to that transaction. The sale of our canals certainly has got one feature which commends itself, and that is, it would relieve the State of the responsibility of patronage, which is always an injurious element in the exercise of a legitimate State Government. I agree with all that has been said by the gentleman from Rockland [Mr. Conger], as to the immensity of our State debt and its gigantic proportions. I agree with the gentleman, that allowing \$500,000,000 as our proportion of the indebtedness of

the United States, that the present amount of our public obligations, State and National, with the amount due from towns and counties, wrings from the productive energies of the State of New York nearly \$100,000,000 per annum. Allowing the amount of the revenues from our canals to be \$4,000,000 in specie, they are a mere bagatelle contrasted with the amount of our annual taxation, they being as one to twenty-five of the whole amount that the labor of this State has to contribute yearly. I shall cheerfully vote for the reconsideration, and also for the substitute offered by the gentleman from Ontario [Mr. Folger], as I consider the question distinct from the proposition that was offered by the gentleman from Erie [Mr. Hatch].

Mr. SMITH—Mr. President: I rise, not for the purpose of extending this discussion, but mainly to protest against the idea that the vote which I gave on this question yesterday and which I may give on the question of reconsideration, shall be considered as any pledge on my part, or any intimation as to the manner in which I am to vote when the question shall be finally put to this Convention on the subject of canal enlargement. I feel in regard to it, as has been well expressed by the gentleman from Onondaga [Mr. Andrews], that we came here for the purpose of discussion, to get light upon the merits of the question; and when the subject shall have been presented in the reports of the proper committees and fully discussed, then to vote as I may feel bound to, under the solemnity of the oath that I have taken. But I do not, with all due respect to the experience and ability of those gentlemen who have intimated that the committee to be appointed here must be favorable to any particular measure, perceive that such an idea is applicable here. It seems to me, that in this Convention we have no measures in the sense in which that term is used in the Legislature. Permit me to call the attention of the Convention for one moment to the language used by the Committee at the commencement of their report. They say that, "while in their opinion, there are some, perhaps many, parts of the Constitution which need no alteration, yet, as the whole fabric of the fundamental law of the State has been committed to this Convention, with instructions to examine it and propose for the consideration of the people such amendments as it may be thought to require, the Committee have deemed it their duty to recommend the examination of all the provisions of the Constitution by appropriate committees." This does assume that there may be no investigation needed in regard to many matters. I understand the object of appointing committees to be merely to arrange business for the convenience of the action of this body. Whether they will recommend action in any particular direction or not we cannot now anticipate. Therefore, it seems to me, it should not be assumed by our vote on this question, that we vote in favor or against any particular policy; nor does it seem to me that the committees here to be appointed are to be appointed with reference to the views of its members upon any particular questions of policy that may come before this Convention, for I think we are not to know, and cannot know at this stage of our proceedings, what questions may be pre-



sented, or in what form they may be presented, or how we may be inclined to act upon them when they come before this Convention.

Mr. VAN COTT—I quite agree with the gentleman from Richmond [Mr. Curtis], that the question involved in this report and in the proposed substitute, is a question of the convenience of the Convention and the distribution of its business. If the gentlemen who support the substitute had been contented to confine the discussion here to that question, I should have been quite satisfied with it, and would have been very willing to be convinced that a different distribution from that recommended by the committee was required by the convenience of the Convention. But the debate which has taken place for a large part of two days has gone largely beyond the question propounded by the gentleman from Richmond [Mr. Curtis]. I would have been very glad if the gentleman himself, after having so lucidly stated what the real question was, had undertaken with the same lucidity of expression to have shown how the convenience of the Convention in the distribution of its business could be facilitated by the proposed substitute. The burden of proof certainly is upon him, and upon others who agree with him in support of the substitute, to show that the committee, which has had this subject under consideration, and which has considered the question of distribution among the committees with reference to this question of convenience, have misconceived on that subject, and to show that the change is required by the convenience of the Convention. Sir, all that we have had on this subject in the dropping fire of debate for many hours, has been the incidental remarks that the subjects committed by sub-division 9 to a committee of sixteen members would be quite beyond the powers of such a committee to consider and properly dispose of; that although it is double in force to the average number of members of the other committees, yet they quite transcend the capacity of any such committee, and therefore the subject should be divided and referred to two committees. That is all that has been said on the subject of convenience. On that subject, let me say that, the question is whether the subjects in sub-division 9 are related to each other so that they are properly considered together, or are they so distinct that they may be more conveniently considered separate from each other? Now what are the subjects? They are the revenues of the State; the debt of the State; the finances of the State and the canals are specifically named, because they are supposed to have a very close relation to this general subject of finance for which this committee is to be raised. Now what relation has the canals to the finances of the State? What are the real questions in difference between those who support the report of the Committee of Sixteen, and those who support the substitute proposed. I conceive, Sir, that the two subjects constitute but one question before this Convention. The same principle which underlies this report we find in the Constitution itself. There is one provision in the Constitution relating to the State officers who have the care and management of the canals, and here the management of the canals is referred to a distinct committee under subdivision

No. 10. Then, there is a provision in the Constitution relating to the finances of the State, as connected with the canals. And here we have in subdivision 9, a committee which is to consider the finances of the State. Now, what is the difference between members of the Convention on the subject of the canals? The discussion has proceeded upon the assumption that there is some party in the State opposed to the enlargement of the canals. Sir, if there is any such party in this State, I have never heard of it. If there is any such party in this Convention, I have yet to see the evidence of it. Some one, it is said, in Plutarch, if I remember rightly, once indulged in a long and tedious panegyric of Aristides. The person who was its recipient, naturally asked the question, "What have I said against Aristides that I should be made to listen to a long discourse in his praise?" Sir, what has the Committee of Sixteen and what has any one in this Convention said against the general proposition of a canal enlargement? What New Yorker, native born or adopted, would lay his hand upon the great canal interest of this State to mar it? What citizen of New York, native or adopted would arrest the progress of that great improvement? Sir, I believe there is no man in this Convention who will have brass enough in his face to stand up on this floor and express his disapproval of an enlargement of the canals. There is no such party, and I believe there is no such member of this Convention. What, sir, is the question before the people of this State, and what will be the question before this Convention? Purely a financial question—purely a question of the ability to enlarge the canals—purely a question of time and mode. When shall we be able? How shall we be able? Through what financial resources or effort or expedient shall we be able to enlarge our canals? Now, sir, it seems to me that very serious injustice has been done to the Committee of Sixteen, upon this subject, in the course of the debate on this and the previous day, not so much from what has been said, as from what is to be implied from the course of debate. An attempt has been made to array the friends of the canals against the report of the committee, upon the assumption that the Committee of Sixteen are opposed to the canals, and have therefore made a provision in the recommendation for standing committees somehow or other, to suppress the subject of the canals—and that the friends of the canals and the canal interests would be indicated in this vote, ranging themselves in opposition to the recommendations of the committee. Sir, that assumption is utterly without foundation. I happened to be a member of that committee, and I made it my business, as I thought it my duty, before going into the committee, to make a very careful analysis of the Constitution, to see the subjects there to be dealt with by the Convention, and to prepare, as did most of the members of the committee, a programme of committees to be recommended to this body; and it was a part of my programme, as it was a part of the programme of other gentlemen to constitute a distinct committee on the subject of the canals. But I was convinced, by my col-



leagues in the committee, that such a distinct committee, except for the management of the canals, was not proper; that the only question in reference to the canals, outside of their care and management, was the question of enlargement, and that their enlargement was a topic of finance, and it was therefore thought proper to bring the subject of the canals, except as to their care and management, and the subject of finance together; and that was the ground—the intimate relations of the two subjects—which induced the recommendation that they go to a single committee. I say that, looking upon this subject as a matter of convenience, and a proper distribution of the business, it is purely a question of finance. If gentlemen will discriminate—if they will attend to what has been carefully said upon the floor—they will see that members have not been able to approach the subject of enlarging the canals without discussing the financial question. My friend the professor, [Mr. T. W. Dwight] in referring to the subject, at once launched out upon the question of finance and the ability of the State to go on with that work. He suggested that \$300,000 of the surplus revenues that went to the general fund, and \$250,000 that went to the support of the State government, could be taken for the enlargement. He says if you take this surplus revenue devoted to those objects, and appropriate it to the enlargement of the canals, you may complete the enlargement in a little while. But does not the gentleman see that when he has taken \$300,000 from the general fund and \$250,000 from the support of the government, a new source of revenue must be opened to supply the \$300,000 to the general fund and \$250,000 for the support of the State government? Does not the gentleman see that the moment he touches the subject he gets upon financial ground, and that he creates a necessity for other sources of revenue, the moment he undertakes to divert the surplus revenues of the canals? Does he not see that if he diverts those sums from those objects, he is obliged to suggest new sources whence to supply the deficiency? Therefore, it is, that the ways and means for enlarging the canals, are part and parcel of the general question of the financial resources of the State. The State debt, its revenues, its financial ability in the way of credit, the ability of the State to raise revenues by way of taxation—all these are a part of the subject of finance. The whole subject is complicated. We shall never deal with the subject of enlargement without treating the whole subject of finance as a unity. Therefore, Mr. President, it was that the committee brought these two subjects together. And now, I would ask my friends on the other side, how they propose to deal with this subject of canals? There are two ways of dealing with it. There may be two classes of opinion on the subject. I think there are from what I have seen. One is to enlarge the canals as soon as we can—as soon as we are able to do it, and the other is a thick and thin unconditional enlargement of the canals. And if the gentlemen who support this amendment will avow themselves so that we can understand what they mean by taking away this subject of the enlargement from the subject of finance, so

that it may be considered abstractly as a thing very desirable, as fruit of which we may eat and grow wise—if they will present the subject in that way, very well; we will understand them. But if they mean what we mean, that we are to enlarge the canal as soon as we are able to enlarge it, and will consider with us what is our ability to enlarge it, then we are united on the subject of the canal enlargement. I would like to know their convictions. I submit that we cannot separate the question of enlargement from the question of ways and means. It is like the question of the enlargement of the family. I think that when you come to the question of the enlargement of the family, the husband and wife must consider it together. [Laughter.] I think that the physiologist and doctor would tell us that it would be very convenient in attending to the distribution of the subject. [Laughter.] Finances are the forces of the State by which it builds its works, and they cannot be separated from it. The only question is whether we shall take up the subject in a fragmentary manner and get it into muddle and confusion, or whether a committee, double in force, consisting of sixteen members, shall deal with it as a unity, and report their conclusions to the Convention for its judgment.

Mr. M. I. TOWNSEND—The gentleman from Kings [Mr. Van Cott], who has just sat down, has succeeded in finding a grievance. It is a grievance that the members of this Convention should differ with a committee of the Convention who have made a report.

Mr. VAN COTT—I beg to assure the gentleman that he is utterly mistaken so far as I am concerned.

Mr. M. I. TOWNSEND—I do not thus understand my duty in this Convention. With all deference to this committee or any other committee, that shall make a report to this body, I suppose it is my duty to go according to my own convictions, the report of the committee notwithstanding. Now, sir, I see that gentlemen upon this floor are anxious to close this debate. I sympathize with them in feeling that the debate has been very considerably protracted. But, sir, I cannot sit still and hear the gentleman from Kings [Mr. Van Cott] charge substantially upon me and those who vote with me, a determination to vote through thick and thin for the enlargement of the canals without reference to the financial position of the State. It seems to me to be forgotten by the gentleman that the Constitution is designed to stand more days than the days of the year, and that the Constitution which we shall frame, if it shall be adopted by the people of the State, will last for at least twenty years in all probability, and that the instrument which we form should be so formed as to meet the exigencies that are likely to arise during that period. Now the gentleman has told us substantially that this is a mere financial question. I protest that it is not a mere financial question. Were it a mere financial question we might rest upon the figures called for by the motion the gentleman from Westchester [Mr. Greeley], which will show every penny of the receipts every penny of the disbursements, not

for the Erie canal, but for the lateral canals when they shall be presented to this body. But, sir, we need something more. I trust we shall have something in this body from some committee. The gentleman says that every man in the city of New York is in favor of the enlargement of the Erie canal. I am happy to hear it stated, because from remarks that have been made in debate here, I began to fear, at least, that there was a feeling of modified favor felt towards the canals in the minds of some gentlemen representing that part of the State. Now, sir, I protest here that no vote cast upon this subject shall commit me, at this stage of our deliberations, either in favor of an enlargement of the canal, or in favor of any particular mode of enlargement. Sir, if we are to have an enlargement of the canal, we ought to know the reason why. My mind has not reached the advanced stage of the mind of the gentleman from Albany [Mr. Harris]. He tells us that the object of this report was for the purpose of specially providing means for the enlargement of the canal, and that this measure ought to go to the Committee on Finance. I want to know what reasons there are for the enlargement of the canals. I want to know what reasons there are why the canal should not be enlarged. I want to know the influence of the canals upon various portions of this State, and to that end I want a report from some committee. If it be true, as has been intimated, that the great commercial metropolis has no such interest in this question, and that the taxes drawn from that metropolis and vicinity are a mere burden upon that part of the State, I want to know it. I want to know from somebody whether these floating cities, which I see upon the Hudson river, moving down with so much momentum toward the commercial capital, are carrying pestilence to New York, or are carrying a blight upon its prosperity, or whether they do favorably affect its interests. If it be true that the mercantile interests of the city of New York have been stimulated by our canal system, then, sir, I want to know whether the building up of that city has caused an increase in the wealth of the county of Richmond, from which the gentleman [Mr. E. Brooks] comes who has spoken here upon this subject, and whether any of its growth and prosperity has crawled out upon the shores of the county of Suffolk, and whether with the taxation upon property in the county of Suffolk there has been no increase in its prosperity by reason of the creation of the Erie canal. I want some report upon that subject. And, sir, there is another subject on which I want a report. I understand sir, that in the North west there is a select people who have gone forth from our loins, aye, very select in intelligence and enterprise, who are represented in our National Congress side by side with the people of the State of New York. The twelve millions of people now there, in the next census, will hold a preponderating power as against us that will be overwhelming. I want to know what will be the effect upon the interests of the State of New York, if we should feel ourselves constrained to stand still and leave those men to find by the best means in their power a highway to the ocean. I want some one

to talk to me on that subject. I want it in black and white in the report of some committee. I know that there has been but just postponed now, by the National Congress, a proposition to make a canal around the Falls of Niagara,—a ship canal. I want to know what effect such a measure as that would have upon the prosperity of this State—not upon the receipts and disbursements of this State, but upon its wealth and prosperity and upon the wealth and prosperity of its commercial capital. I want to know if that project fails, what chance there is that the commerce of the great West will be sent down through the St. Lawrence to the ocean; and if the commerce of the West is neither to seek the St. Lawrence nor seek the lower lakes by way of a ship canal around the Falls of Niagara, I want to know whether that energetic people will not put their shoulders to the wheel, and again push their way to the Gulf of Mexico as in the Providence of God we have seen them do once, side by side with the sons of New York, over the necks of a rebellious people. I want to know something on this subject. But, forsooth, this body is asked to treat it as a matter of dollars and cents,—as a question of finance alone. Of course it will be a financial question in the end. The question will come up whether we have the ability to do it—but the question first to be considered is whether the canal should be enlarged at all. Is it worth making the effort? Is it of sufficient importance to incur the expense, to vote for the necessary taxation or incur the liability needful to do it. The question of the importance of these canals is a question of their influence. It has been said to me this morning in speaking of the influence of the canals that in the Fall of 1866, the amount realized for the apples raised in the county of Orleans was more than the entire value of the fee simple of the land in that county, when the Erie canal was constructed through it. I want to know some of these facts. When the gentleman from Suffolk [Mr. Strong,] said that he did not consider the Southern tier of counties interested in the canals, he failed to remember that we have something more than the Erie canal. The gentleman forgot that we have lateral canals which extend from the Erie canal and ramify to the Southern tier, and add value to the lands there and increase its commercial prosperity. If the gentleman will go and see the business that is done on those lateral canals, he will come to the conclusion that the Southern tier of counties is interested. Sir, we have to-day between eight and nine hundred miles of canals. But forsooth, eight or nine hundred miles of canals, better than any country on the habitable globe possesses, seem not to be of sufficient importance to justify the raising of a committee for the consideration of that valuable interest to the State. Sir, I do not so understand the statemanship that should control this State. It was not the feeling of our fathers, and it should not, in my opinion, be the feeling to-day. It is an interest vital to the continued prosperity of our State. At any rate, we should like to have a committee on this subject. I differ with the gentleman from Erie [Mr. Verplanck], as to the duty of the Chair to appoint a committee in favor of any particular project. I hope if such a com-

Mr. BELL—I simply rise to say that I entirely approve of the object of this amendment. My experience has convinced me that it is a subject which should be taken into consideration and thoroughly reviewed by a proper committee of this Convention. The amounts that we have appropriated yearly to these charitable and eleemosynary institutions are very considerable and they are increasing rapidly from year to year. It is a very nice question to know exactly how far the State should go in support of public charities, and what should be required of the particular friends of these institutions and of the counties in which they are located. I had it in my mind to offer a proposition providing for a committee of that kind, but inasmuch as it has been offered by the gentleman from Richmond [Mr. E. Brooks], I shall heartily support it.

Mr. T. W. DWIGHT—In one of the early days of our session, I offered a resolution upon this subject, that there should be a standing committee appointed to take into consideration the superintendence and visitation of our charitable institutions. What led me to offer that resolution were circumstances like these: It is well known that these charitable bequests are regarded in the law as public uses, and are the only property which are now to be held in perpetuity. They, therefore, are eminently fit for the consideration of a body which has a regard to public interests. Now, sir, this subject has excited vast interest in other countries as well as in our own. In England it became necessary in the year 1820 to take into consideration the whole subject of charitable institutions. The reports at that time on the subject which were made by the commissioners appointed, embraced nearly forty large folio volumes. And the commissioners found it necessary to go to each point in the country where charitable institutions existed, and to examine into their condition and history, and report upon them. The investigation was made, and the results excited so much interest that a permanent Board of Commissioners was appointed. Sir, in the course of time, this same class of questions has arisen in this country, and I believe that we shall soon find the same difficulties here. These institutions being perpetual, there will, naturally, be committed breaches of trust. There should be such a care and control over trust funds that the funds shall be sacredly applied to the objects for which they were bestowed. There is another consideration which belongs here. Gentlemen of the legal profession know that the whole doctrine of charities in the State of New York is now involved in uncertainty. It is not now clear whether a person can give by will, for example, to trustees, any property to be held for charitable uses. It is even doubtful whether Mr. Peabody could, in the State of New York, have made a gift to trustees, or whether the Sanitary Commission or Christian Commission could have held funds under the laws of this State for the praiseworthy purposes for which they were bestowed; or whether if one of them had died his interest in the property would not have gone to his own personal representatives. Now, it seems to me, that this subject should be put under regulation and control, and that the State should

say whether they will permit these charitable gifts to be made or not. Here is another consideration, sir, which is appropriate here. There was a bill presented last winter in the Legislature providing that any person who chose to make a gift for a charitable purpose, and it should be considered lawful by a Judge of the Supreme Court, should be assured that it was secured from loss by a payment of it into the State Treasury, so that the State could take the funds and pay over the interest from time to time for the support of the charitable object. Whether that is a proper course to pursue or not, I do not know. But, sir, it certainly is a question worthy of consideration. This point, in my opinion, ought to be brought before this Convention, whether it is not necessary that the State should take control of these institutions. Another point which is exciting a great deal of interest is the bestowal of charitable funds upon corporations, and the limitation of that right, and the proper visitation or care of the funds after such bestowal has been made. It seems to me that there are abundant reasons upon these various grounds why there should be such an investigation as is called for by the proposition of the gentleman from Richmond [Mr. E. Brooks]. A friend of mine in this Convention, Judge Comstock, collated, several years ago, with great fullness, a list of the corporations in this State, of a charitable nature. I am sure it would utterly astonish the members of this Convention if that document should be read before them to see the number of charitable institutions we have in operation and the importance of their objects, and the amount of funds there is under their control. Yet they are under no supervision, under no care. They are left to manage the funds as they please, and there were complaints last winter in a New York paper that the funds of a certain charitable institution were perverted. I do not say anything in reference to the correctness of the statement; but it was published as a fact, that the funds of an institution ostensibly for the support and care of the orphans of soldiers, were really used for the private purposes of the party who had charge of the institution. That ought to be looked into, and the time has come in this State for the organization of some authority which shall take charge of the charitable institutions, and see that they carry out the provisions for which they were designed.

Mr. E. BROOKS—I would like to change the phraseology of my amendment. I would suggest that the subdivision I propose should read "on Public Charities."

Mr. HALE—I wish merely to inquire of the gentleman from Richmond [Mr. E. Brooks] whether the subject suggested by him does not fall within the province of Committee No. 3, as provided for by the Committee of Sixteen "on the powers and duties of the Legislature except as to matters otherwise referred." I do not know that there is any objection to having a distinct committee on the subject. I suppose that probably the idea of the Committee of Sixteen was that this subject would fall within the purview of this committee.

Mr. STRONG—I wish to make a remark on the subject of this motion. The resolution of the gentleman is not broad enough, if it is passed, to meet



that this committee, the *omnium gatherum* committee upon all the balance of corporations, are to have very little to do. Why, sir, the Legislature of this State have about one-quarter of the time of their whole session consumed on this question of railroad corporations, and nine-tenths of all the hard things that are said against our Legislature are said in relation to questions growing out of the applications here for railroad corporations, doubtless unadvisedly said against our legislators, but at the same time they are said; and if there is corruption in the Legislature of this State; if there is money used for any purpose here to affect legislation, that money is raised in the interest of railroad corporations. It is the duty of this Convention to provide some way by which the Legislature of this State shall not be tempted, even upon the subject of applications for railroad corporations.

The question was then put on the amendment offered by Mr. Stratton, and it was declared lost.

There being no further amendments, paragraph 14 was declared adopted.

The SECRETARY then proceeded to read paragraph 15.

Mr. GOULD—The subject of State prisons is certainly one which is very interesting to the people of the State, and it is obvious that it is only a part of a whole series of provisions intended for the security of life and property. I intend to propose an amendment to this paragraph which shall cover all collateral subjects and bring them before the view of the committee. It is obvious, sir, that we have also a system of penitentiaries in this State, and in those penitentiaries there are as many persons incarcerated as there are in the State prisons—between two and three thousand persons in all. Then there are our common jails. There are between seventy or eighty thousand persons passing through our jails every year. Then again, sir, I believe it is very possible so to organize the social forces of the State, that we may be able to prevent a great mass of crime, if the frame work and foundation for such legislation shall be laid in the fundamental law of the State, and, therefore, with the view of bringing in this whole important subject which, as is in no other part of this distribution met at all, I offer the following amendment:

Amend subdivision 15 by striking out the words "on State Prisons," and inserting in lieu thereof the words "on the prevention and punishment of crime."

Mr. VAN CAMPEN moved to amend the proposed substitute so as to read, "on State prisons and the prevention and punishment of crime."

Mr. GOULD—I accept the amendment.

The question was then put on the amendment of Mr. Gould as modified, and it was declared adopted.

There being no further amendments, paragraph 15 was declared adopted.

The SECRETARY then proceeded to read paragraphs Nos. 16, 17 and 18, and there being no objection thereto, they were declared adopted.

The SECRETARY then proceeded to read paragraph 19.

Mr. E. BROOKS—I move to insert as subdivision 19 a new Committee on charitable bequests.

Sir, I think the Convention, if they will reflect a moment upon the very large amount of money appropriated in this State for charities will see the propriety of a committee like this. I think the Chairman of the Committee of Sixteen if he will recall for a moment the large amount of money we expend from year to year for the deaf and dumb, blind, insane and idiotic, and for the new charitable institutions which are instituted at Ovid and at Poughkeepsie on the Hudson, and various other charities, he will see the propriety of having a separate committee on this subject. Let me read from the book before me the amount of money that has been expended in the State for the last ten years.

For the Deaf and Dumb Institution,.....	\$1,000,000 00
For the Blind, New York,.....	514,068 81
Blind, chapter 587, Laws of 1865,.....	81,687 59
Society for the Reformation of Juvenile Delinquents, New York,.....	689,691 69
House of Refuge, Western New York,....	570,550 81
Lunatic Asylum,.....	523,108 88
Idiot Asylum,.....	344,904 56
Willard Asylum for the Insane,.....	65,262 31
Hospitals and other Charitable Institutions,.....	900,862 88
Orphan Asylums,.....	532,418 55
Dispensaries and Infirmaries,.....	128,775 00
Support of Foreign Poor in New York and other counties,.....	56,000 00

Now, sir, it seems to me there is not a more important subject for the consideration of the Convention, among the many subjects that will come up for consideration, than the subject of charitable bequests, and I hope that the suggestion for such a committee will meet with the approval of the Chairman of the Committee of Sixteen, [Mr. Harris].

The PRESIDENT—What is the amendment of the gentleman from Richmond, [Mr. E. Brooks].

Mr. E. BROOKS—It is to amend subdivision 19, so that it will provide for a Committee on Charitable bequests, and let the present subdivision 19 be subdivision 20.

Mr. HARRIS—I concur with the gentleman from Richmond [Mr. E. Brooks] in the importance of the subject to which he has referred. It cannot be exceeded in importance by any other thing, perhaps, connected with human welfare. But I am at a loss to conceive how the Constitutional Convention has anything to do with it. What constitutional provision can we make in reference to these great charities? It seems to me it is a subject we have nothing to do with in framing a constitution, and that is the objection I have to it. It is not within the province of our duty.

Mr. E. BROOKS—One word in reply to the gentleman from Albany [Mr. Harris]. It certainly is in our power to provide a State Board, to take control of these institutions. We impose upon the Legislature the performance of certain duties in reference to these great charities; we certainly are not trenching upon the Legislature in doing service like this. As I have said already, and as the Chairman of the Committee concedes, it is a subject of vast importance. You have got a Committee on State prisons and the prevention of crime. It seems to me as much a duty of this Convention to have a committee on the great charities of this State as to have a committee on State prisons—at least that is my judgment.



Mr. BELL—I simply rise to say that I entirely approve of the object of this amendment. My experience has convinced me that it is a subject which should be taken into consideration and thoroughly reviewed by a proper committee of this Convention. The amounts that we have appropriated yearly to these charitable and eleemosynary institutions are very considerable and they are increasing rapidly from year to year. It is a very nice question to know exactly how far the State should go in support of public charities, and what should be required of the particular friends of these institutions and of the counties in which they are located. I had it in my mind to offer a proposition providing for a committee of that kind, but inasmuch as it has been offered by the gentleman from Richmond [Mr. E. Brooks], I shall heartily support it.

Mr. T. W. DWIGHT—In one of the early days of our session, I offered a resolution upon this subject, that there should be a standing committee appointed to take into consideration the superintendence and visitation of our charitable institutions. What led me to offer that resolution were circumstances like these: It is well known that these charitable bequests are regarded in the law as public uses, and are the only property which are now to be held in perpetuity. They, therefore, are eminently fit for the consideration of a body which has a regard to public interests. Now, sir, this subject has excited vast interest in other countries as well as in our own. In England it became necessary in the year 1820 to take into consideration the whole subject of charitable institutions. The reports at that time on the subject which were made by the commissioners appointed, embraced nearly forty large folio volumes. And the commissioners found it necessary to go to each point in the country where charitable institutions existed, and to examine into their condition and history, and report upon them. The investigation was made, and the results excited so much interest that a permanent Board of Commissioners was appointed. Sir, in the course of time, this same class of questions has arisen in this country, and I believe that we shall soon find the same difficulties here. These institutions being perpetual, there will, naturally, be committed breaches of trust. There should be such a care and control over trust funds that the funds shall be sacredly applied to the objects for which they were bestowed. There is another consideration which belongs here. Gentlemen of the legal profession know that the whole doctrine of charities in the State of New York is now involved in uncertainty. It is not now clear whether a person can give by will, for example, to trustees, any property to be held for charitable uses. It is even doubtful whether Mr. Peabody could, in the State of New York, have made a gift to trustees, or whether the Sanitary Commission or Christian Commission could have held funds under the laws of this State for the praiseworthy purposes for which they were bestowed; or whether if one of them had died his interest in the property would not have gone to his own personal representatives. Now, it seems to me, that this subject should be put under regulation and control, and that the State should

say whether they will permit these charitable gifts to be made or not. Here is another consideration, sir, which is appropriate here. There was a bill presented last winter in the Legislature providing that any person who chose to make a gift for a charitable purpose, and it should be considered lawful by a Judge of the Supreme Court, should be assured that it was secured from loss by a payment of it into the State Treasury, so that the State could take the funds and pay over the interest from time to time for the support of the charitable object. Whether that is a proper course to pursue or not, I do not know. But, sir, it certainly is a question worthy of consideration. This point, in my opinion, ought to be brought before this Convention, whether it is not necessary that the State should take control of these institutions. Another point which is exciting a great deal of interest is the bestowal of charitable funds upon corporations, and the limitation of that right, and the proper visitation or care of the funds after such bestowal has been made. It seems to me that there are abundant reasons upon these various grounds why there should be such an investigation as is called for by the proposition of the gentleman from Richmond [Mr. E. Brooks]. A friend of mine in this Convention, Judge Comstock, collated, several years ago, with great fullness, a list of the corporations in this State, of a charitable nature. I am sure it would utterly astonish the members of this Convention if that document should be read before them to see the number of charitable institutions we have in operation and the importance of their objects, and the amount of funds there is under their control. Yet they are under no supervision, under no care. They are left to manage the funds as they please, and there were complaints last winter in a New York paper that the funds of a certain charitable institution were perverted. I do not say anything in reference to the correctness of the statement; but it was published as a fact, that the funds of an institution ostensibly for the support and care of the orphans of soldiers, were really used for the private purposes of the party who had charge of the institution. That ought to be looked into, and the time has come in this State for the organization of some authority which shall take charge of the charitable institutions, and see that they carry out the provisions for which they were designed.

Mr. E. BROOKS—I would like to change the phraseology of my amendment. I would suggest that the subdivision I propose should read "on Public Charities."

Mr. HALE—I wish merely to inquire of the gentleman from Richmond [Mr. E. Brooks] whether the subject suggested by him does not fall within the province of Committee No. 3, as provided for by the Committee of Sixteen "on the powers and duties of the Legislature except as to matters otherwise referred." I do not know that there is any objection to having a distinct committee on the subject. I suppose that probably the idea of the Committee of Sixteen was that this subject would fall within the purview of this committee.

Mr. STRONG—I wish to make a remark on the subject of this motion. The resolution of the gentleman is not broad enough, if it is passed, to meet

the exigencies of the occasion. It should be a committee on charitable relations, which would include bequests of personal property and devises of real estate. I suppose the case of Williams against Williams which was instituted by myself when at the bar, was the first that went before the Court of Appeals, and in that case it was decided that the statute did not apply to charitable bequests, and it was intimated that the statute of uses and trusts did not apply to devises of real estate, and that the statute to prevent perpetuity did not apply. But since that time, there have been two decisions of the Court of Appeals overruling the doctrine in the case of Williams against Williams, and the law is now settled, and does not require any constitutional provision.

Mr. MASTEN—I understand the law to be well settled now that the only way in which a public charity can be created in perpetuity, is by the creation of a corporation under authority of some legislative act. I therefore would prefer the language suggested in the resolution offered by the gentleman from Oneida [Mr. T. W. Dwight,] which would include the creation and visitation of public and private charities.

Mr. E. BROOKS—I think the modification covers the whole subject, so far as it is necessary for the consideration of a committee. I have no objection to any amendment which will accomplish the object in view. It seems to me that the words, "public charities" do not accomplish that object. I accept "charities" instead of public charities. That seems to cover everything that I have in view.

Mr. BELL—It occurs to me, after all, that it would be better to amend by having it "charities and charitable institutions." Would not that accomplish the object? I would ask the mover to amend by substituting those words.

Mr. BROOKS—I assent to the modification.

The question was then put on the amendment, and it was declared carried.

Mr. DUGANNE—I respectfully call from the table the resolution which I introduced yesterday.

The PRESIDENT—The motion of the gentleman is not now in order.

Mr. DUGANNE—Then I offer it as an additional committee to take the place of Committee No. 19—an additional committee in industrial interests, to which shall be referred all memorials, petitions, and other matters appertaining to the rights and claims of labor.

The PRESIDENT—This is hardly germane to the substitute offered by the gentleman from Richmond, [Mr. E. Brooks.] It is new matter.

Mr. DUGANNE—I beg leave to ask if it cannot be introduced as an amendment to the rule?

The PRESIDENT—The Chair holds that it can.

Mr. E. BROOKS—I hope that the gentleman will not mix up his proposition with that which refers to public charities.

The question was then put on the amendment of Mr. Duganne, and it was declared lost.

The question then recurred on the adoption of the 19th rule as amended, and it was declared adopted.

Mr. DUGANNE—I now move that a new committee be authorized on industrial interests to which shall be referred all memorials, petitions

and other matters appertaining to the rights and claims of labor.

Mr. HARRIS—I hope that the proposition will not be adopted. There is no occasion, in my judgment, for such a committee. If my friend from New York [Mr. Duganne] has any particular views on the subject, any proposition he has to present may be referred to the Committee on the Bill of Rights. That committee will need something to do. If he has any particular views on the subject of the rights of labor, let them go to that committee. I hope that course will be taken.

Mr. DUGANNE—I have no particular views, nor do I intend on my own volition to advance any particular views on the rights or claims of labor. But I do respectfully submit that the industrial interests of this State are to be considered as of as much importance in a Convention of the people as any private corporation or banking institution, or any other association or interest than that which is strictly popular. I have considered that it was best to wait until the last to offer this amendment, although in my estimation it is one of the first interests. The industrial interests of the State cover very wide grounds. I think they cover a great many movements which gentlemen are well aware of now in progress. We shall, probably, before we get through with our sessions, be in receipt of many communications with regard to the subject of labor, and its rights, and it is no more than respectful to the interests which I intended to be represented by that committee that such a committee should be appointed, to which shall be referred all respectful communications on the subject of labor, and its claims and rights. I certainly hope the subject will not be ignored, and that the sense of the Convention will be in favor of it.

Mr. CONGER—I would suggest to the mover of the resolution [Mr. Duganne], that it is unnecessary for him to add the latter clause of his proposition "to which shall be referred all matters," &c., because they will go as a matter of course to that committee. If he is willing to leave the proposition to raise a committee to take into consideration the question of industrial interests of the State, other than those referred to the committees provided in the previous paragraphs, he will embrace considerations that grow out of the interests of the agricultural community, and the mechanic arts also. And I agree with him in saying that those interests should receive consideration and attention from this Convention, without deviating from the proper objects for which we are convened. If he will accept that modification of his resolution I will support it, in order that we may have a committee which shall be known as a Committee on Industrial Interests, except those embraced in the previous subdivisions.

Mr. DUGANNE—I accept the modification.

Mr. BELL—I wish to inquire through the Chair if the committee took into consideration in its decision, the matter of the Salt Springs.

The PRESIDENT—The Chair is not able to give the gentleman any information.

Mr. BELL—The State has a very large interest in the salines and salt springs of the State. There is a property therein, variously estimated at from

four to ten millions of dollars, with a large revenue, and it should receive a proper consideration. If it is provided for by the committee in one of these subdivisions, I am content; otherwise I propose to offer an amendment moving for a distinct committee upon that subject.

Mr. SEYMOUR—I call for the reading of the ninth subdivision; I think that will cover this question. It was intended to cover all the property of the State, and if not, then it ought to be there somewhere.

Mr. BELL—I do not exactly understand the gentleman, and therefore I offer the following amendment:

*Resolved*, That a committee of seven be appointed by the President, whose duty it shall be to consider and report on the disposition, management, revenues and expenditures of the salt springs of the State:

Mr. CONGER—I would suggest to the mover of this resolution, that it would be more consistent with the plan upon which these committees are enumerated, and he would simplify it by making it No. 21 or 22 as the case may be, and have it read "No. 21. On the salt works of the State." If that meets the approbation of the gentleman, as I suppose it will, I will state very briefly, that as the Convention has by its last vote, separated from the consideration of the Finance Committee *all* the property of the State, except the salt works, and given a separate and independent committee to the canals, and to the State prisons and other public property of the State, it ought now, in consistency and in justice to itself, to give a committee to the only other remaining property of the State which has not been specified.

Mr. BELL—I am not particular what form this resolution shall take, neither am I strenuous that it shall be referred to a special or select committee, I only wish that the interests of the State may be protected, and that this large interest may be properly considered. If the gentleman prefers to put it in that form, I will accept it. It seems to me, that this reservation of the salt works is of sufficient importance, to be referred to a committee; and in saying that I have no desire to be a member of that committee, I simply desire that this interest may be examined and reported upon. In the present constitution, gentlemen will observe there is a constitutional provision with regard to the salt springs and the salt spring reservation, so that however the committees were arranged in the Convention of 1846, there was a report on that subject, and that subject was particularly and definitely set forth in the constitution. I will accept the suggestion of the gentleman from Rockland. [Mr. Conger.]

The SECRETARY read the amendment as follows:

"No. 21. On the salt springs of the State."

The question being put on the amendment, it was declared adopted.

Mr. VAN CAMPEN—I would like now to call up my resolution in reference to the Indians of the State.

The PRESIDENT—The Chair would inform the gentleman that it is not now in order.

Mr. TUCKER offered the following amendments:

Amend resolution 11 by inserting after the word "cities," the words "and incorporated villages;" and amend subdivision 12 by striking out the words "and villages."

The PRESIDENT—This being two separate propositions, the question will be taken separately.

Mr. TUCKER—I have only to say that I see no reason why the committee should have seen fit to divorce two classes of municipalities. I see no reason why the same committee should not consider cities and incorporated villages.

The question being then put upon the amendment as to paragraph 11, it was declared to be lost.

The question was then put upon the amendment as to paragraph 12, and it was declared to be lost.

Mr. VAN CAMPEN offered the following amendment:

"No. 22. On the relations of the State to the Indians residing therein."

Which was adopted.

The SECRETARY then proceeded to read paragraph 19.

Mr. ROBERTSON offered the following amendment:

By adding at the end thereof "and laws."

Which was lost.

The SECRETARY then proceeded to read the unnumbered paragraphs.

Mr. HARRIS—The committee of Sixteen, in making this recommendation as to the number of the Committee, had some regard to the number of members of the Convention, and it was their purpose to provide that every member should have a place on some committee, and that no member should have a place on two committees, but now two committees have been added to the number, so that arrangement cannot be carried into effect. Again, sir, the Committee on Finance has virtually been divided, and there are now two committees on finance; the Committee on finance proper, and the Committee on canals, which will be also a Committee on finance; that Committee is as important a committee as the other, beside having in charge the *glory and honor of the State* (Laughter), therefore that Committee should certainly be as large as the Committee on finance. To make two committees of sixteen each, would be to delegate to this subject one-fifth of this Convention, quite too much, I think, to be allotted to it, I am therefore inclined to think we had better make both committees of an equal number, and to make them less—I would therefore prefer a smaller number, and for the purpose of getting the sense of the Convention I would move, that the Committee on canals and finance consist of sixteen members each.

Mr. FOLGER—I would move that it be fifteen instead of sixteen, as I have always found that an uneven number on a committee facilitated business.

Mr. HARRIS—I will accept that modification.

The question was then put upon the motion as modified, and it was declared to be carried.

Mr. HUTCHINS—I would also move that Committee No. 9 and Committee No. 10 should also consist of fifteen members each.

The question was then put upon the motion, and it was declared carried.



The SECRETARY then proceeded to read the other unnumbered paragraphs, and no objection being made thereto, they were declared adopted.

Mr. CONGER moved that the report of the Committee of sixteen, as amended, be adopted.

Which was carried.

Mr. SHERMAN—I move the adoption of a small portion of the report of the Committee on Rules, not yet adopted, for the appointment of four business committees, committee on privileges and elections, on printing, on contingent expenses, and on engrossment and enrollment.

The question was then put upon the motion, and it was declared carried.

Mr. FULLER moved that the report of the Committee of sixteen as amended be transferred to its proper place, in the report of the Committee on Rules, and that the rules be printed.

Which was carried.

Mr. HARRIS—We have now gone through with the preliminary work of ordering the Committees, and in order to enable the President to have time to consider the proper committees, and make the appointments, and as there is no other business, I apprehend, which can usefully occupy the time of this Convention, before the committees are appointed, I would move that when the Convention adjourns it adjourn to meet on Tuesday next at six o'clock P. M.

Mr. ALVORD—I move to strike out six o'clock, P. M., and insert eleven o'clock, A. M.

Mr. MERRITT—I think it had better be at six o'clock. Those of us who desire to go home and have to go a long distance, cannot arrive here in time, if it is put at eleven; and I feel quite confident from the number of committees ordered by the Convention, it will require all that time for the President to prepare these committees, and I am persuaded that it will be better to adjourn until six o'clock, Tuesday, than at an earlier hour.

Mr. ALVORD—After getting the opinion of those directly around me, that six o'clock is a better hour, though I am of the opinion that to make it six o'clock is virtually to dissipate Tuesday, yet I will withdraw my amendment.

The question was then put upon the motion of Mr. Harris, and it was declared carried.

Mr. WEED moved to adjourn.

Mr. GREELEY—I hope not, until we make those select committees that have been asked for.

Mr. MERRITT offered the following resolution:

*Resolved*, That the privileges of the floor are hereby extended to the Hon. Geo. H. Thacher, Mayor of the city of Albany.

The PRESIDENT—The Chair would inform the gentleman that under the rules that cannot now be considered.

Mr. MERRITT—Then I ask for unanimous consent.

No objection being made the question was then put upon the resolution and it was declared to be adopted.

Mr. GREELEY—I beg the gentleman from Clinton [Mr. Weed] to withdraw his motion until we can get through with the appointment of the committees.

Mr. WEED—At the request of the gentleman, I will withdraw it.

Mr. GREELEY—I ask the Chairman to take up

the resolutions for select committees. There is one offered by Judge Graves for female suffrage. I hope they may be taken up and disposed of.

The PRESIDENT—The Chair will announce the proper order of business. Resolutions are first in order.

Mr. GRAVES offered the following resolution:

*Whereas*, The use of adulterated intoxicating liquors has become an alarming evil, increasing domestic sorrow, creating pauperism and crime, thereby adding to the burdens of taxation, therefore,

*Resolved*, That a committee of one from each judicial district be appointed to report,

1. Whether in their opinion, under our republican form of government, any authority should be granted to sell, or any prohibition enacted against the sale of intoxicating liquors, either by a legislative or organic law of the State.

2. Whether in their opinion, the sale of intoxicating liquors should be denied to all except such as shall receive a certificate under the hand and official seal of a person properly qualified and duly appointed showing that the liquor offered for sale had been carefully analyzed and was unadulterated, pure and contained no poisonous drug.

3. Whether in their opinion any law authorizing or prohibiting the sale should not be organic instead of legislative—thereby enacting a rule controlling and regulating public opinion and relieving each successive Legislature from the pressing importunities of those in favor of, or opposed to the sale of intoxicating drinks.

The resolution was laid upon the table and ordered to be printed.

Mr. GREELEY—I now move that the resolution for a select committee on female suffrage be taken up and acted upon.

Mr. HARRIS—I hope the gentleman from Westchester [Mr. Greeley] will withdraw that, for this reason: these resolutions will all be properly referable, to some of the committees which are ordered; when they are appointed, then these subjects can be taken from the table, and if no one else does, I myself will call them up and move to refer them to the proper committee.

Mr. GREELEY—I will withdraw the motion.

On motion of Mr. WEED the Convention adjourned.

TUESDAY, June 18, 1867.

The Convention met at 6 o'clock P. M., pursuant to adjournment.

Prayer was offered by Rev. THOMAS DORAN.

The Journal of Friday was read by the Secretary, and was approved.

The PRESIDENT announced the reception of a communication, which was read by the Secretary in words as follows:

MICHIGAN STATE LIBRARY,  
LANSING, June 15, 1867. }

*To the President of the Constitutional Convention of New York:*

Sir—The following is a copy of a resolution adopted by the Constitutional Convention of Michigan, on yesterday:



*Resolved*, That the State Librarian be directed to make arrangements to exchange ten copies of the journal, debates and proceedings of this Convention with the Constitutional Convention of New York, for like documents, to be forwarded daily.

It will afford me much pleasure to forward daily to your address, for the use of the Constitutional Convention of New York, ten copies of the documents, &c., referred to in the foregoing resolution, asking respectfully therefor, that ten copies of the journal, debates and documents of the Constitutional Convention of New York be forwarded daily to my address, for the use of the Constitutional Convention of this State.

I have the honor to be, very respectfully, your obedient servant,

J. EUGENE TENNEY,  
*State Librarian of Michigan.*

Ordered to be referred to the Standing Committee on Printing, when appointed. ●

Mr. FOLGER offered the following resolution:

*Resolved*, That the Secretary of the Convention request by circular addressed to the Clerk of the Court of Appeals; the Clerk of each county in the State; the Clerk of the Court of Common Pleas in the city and county of New York; the Clerk of the Superior Court in the city and county of New York; the Clerk of the Superior Court in the city of Buffalo; the Clerk of any Recorder's Court; the Clerk of any Mayor's Court; the Clerk of the Court of General Sessions in the city and county of New York, that such clerks respectively report to this Convention, as speedily as practicable, how many causes were on the last calendar of the Court or Courts of which he is the Clerk, at the terms thereof for the year ending January 1st, 1867; and what was the oldest and what was the youngest date of issue thereof (including therein the calendar of the general term, the special term, and the circuit or trial term, if any such term there be); and at such term how many causes were argued, how many were submitted, and (in courts where there are trials and references) how many were tried and how many were referred; and in the case of the clerk of a criminal court, how many indictments were pending at the last term thereof, and how many tried, or otherwise, and in what manner disposed of; and that those of said clerks who keep a docket of judgments, report how many judgments were docketed within the year ending Jan. 1, 1867, and the amount of each, and the court in which the same originated, and the court in which, or whether by referee, the final judgment or decision was rendered or made, and that in reporting the amount of such payments, the amount of recovery and the amount of costs be separately stated.

Which was laid over under the rule.

Mr. COOKE offered the following resolution:

*Resolved*, That the several county clerks in the State be required to furnish to this Convention a statement showing:

1. The aggregate number of days' session of the Circuit Court and Courts of Oyer and Terminer in their respective counties during the year 1866.

2. The aggregate number of days' session of the General Term of the Supreme Court in their respective counties during the same year.

3. The whole number of civil actions for libel, slander, assault and battery and malicious prosecution, tried in such counties respectively during the same year, and the aggregate amount of the recoveries therein.

4. The number of causes originating in Justices' Courts, in which the amount in controversy did not exceed fifty dollars, carried to the Supreme Court by appeal during the same year.

Which was laid over under the rule.

Mr. LAPHAM offered the following resolution:

*Resolved*, That the Governor of the State be requested to communicate to the Convention, as soon as practicable, a list containing the number of the applications made to the Executive for pardons during the years 1864, 1865 and 1866; the number of such applications granted, with the nature of the offenses in classes.

Which was laid over under the rule.

Mr. CASE offered the following resolution:

*Resolved*, That the Committee on Powers and Duties of the Legislature be requested to report at an early day for the consideration of the Convention an amendment to the Constitution prohibiting the Legislature making any appropriations or donations of money to any private or local, charitable or religious institutions or corporations, and whenever any appropriations are made by the Legislature other than for purposes of Government and State Institutions, such appropriations shall be made to each and every county of the State ratably according to population as shown by the last preceding census.

The question was then put on the resolution of Mr. Case, and it was declared adopted.

Mr. FOWLER offered the following resolution:

*Resolved*, That it be referred to the appropriate committee, to take into consideration the propriety of reporting an amendment to the Constitution, prohibiting the Legislature from passing any law granting, or authorizing the granting of any license for the sale of spirituous liquors.

Mr. HARRIS—I prefer that should lie upon the table, until the committees are announced, so it may be referred to some committee by name. I move that it lie upon the table.

The question being put upon the motion of Mr. Harris, it was declared to be carried.

Mr. BICKFORD offered the following resolution:

*Resolved*, That the Secretary of State be requested to furnish to this Convention a tabular statement in relation to the population of each county, town and ward of the cities of this State, according to the census of the year 1865; showing in one column the total population; in another the number of aliens; in another the number of persons of color not taxed; in another the whole number of persons of color; in another the population excluding aliens and persons of color not taxed; in another the population excluding aliens only; in another the population excluding persons of color not taxed only; and in another the population excluding only all persons of color.

Which was laid over under the rule.

Mr. HARRIS—It seems to me, that we have acted rather hastily, in the adoption of the resolution instructing the Committee on the Powers and Duties of the Legislature in relation to their

report, and with a view to its further consideration, I move a reconsideration of the vote by which it was adopted.

The PRESIDENT announced the question on the motion to reconsider.

Mr. RATHBUN—Mr. President: Ought not the motion to lie over until to-morrow, under the rule? I think that the rules provide that a motion to reconsider shall not be taken up the same day.

The PRESIDENT—The point of order is well taken, and the motion will lie upon the table.

On motion of Mr. ARCHER the Convention adjourned.

WEDNESDAY, June 19, 1867.

The Convention met at 11 o'clock.

Prayer was offered by Rev. CHAS. GRAVES.

The Journal of yesterday was read by the SECRETARY, and was approved.

The PRESIDENT then announced the following standing committees:

**ON THE PREAMBLE AND THE BILL OF RIGHTS.**

Messrs. Evarts, of New York.  
Frank, of Wyoming.  
A. R. Lawrence, of New York.  
Bowen, of Niagara.  
Palge, of Schenectady.  
Spencer, of Steuben.  
Hardenburgh, of Ulster.

**ON THE LEGISLATURE—ITS ORGANIZATION AND THE NUMBER, APPORTIONMENT, ELECTION, TENURE OF OFFICE, AND COMPENSATION OF ITS MEMBERS.**

Messrs. Merritt, of St. Lawrence.  
Cooke, of Ulster.  
Sherman, of Oneida.  
Monell, of New York.  
Barker, of Chautauqua.  
J. Brooks, of New York.  
Merwin, of Jefferson.

**ON THE POWERS AND DUTIES OF THE LEGISLATURE, EXCEPT AS TO MATTERS OTHERWISE REFERRED.**

Messrs. Rathbun, of Cayuga.  
Rumsey, of Steuben.  
Robertson, of New York.  
E. A. Brown, of Lewis.  
Field, of Orleans.  
M. H. Lawrence, of Yates.  
Burrill, of New York.

**ON THE RIGHT OF SUFFRAGE AND THE QUALIFICATIONS TO HOLD OFFICE.**

Messrs. Greeley, of Westchester.  
Endress, of Livingston.  
L. W. Russell, of St. Lawrence.  
Cassidy, of Albany.  
Merrill, of Wyoming.  
Williams, of Oneida.  
Schumaker, of Kings.

**ON THE GOVERNOR AND LIEUTENANT-GOVERNOR, THEIR ELECTION, TENURE OF OFFICE, COMPENSATION, POWERS AND DUTIES, EXCEPT AS OTHERWISE REFERRED.**

Messrs. C. L. Allen, of Washington.  
E. P. Brooks, Steuben.  
A. J. Parker, of Albany.  
Flagler, of Niagara.  
Wakeman, of Genesee.  
Miller, of Delaware.  
Garvin, of New York.

**ON THE SECRETARY OF STATE, COMPTROLLER, TREASURER, ATTORNEY-GENERAL, AND STATE ENGINEER AND SURVEYOR, THEIR ELECTION OR APPOINTMENT, TENURE OF OFFICE, COMPENSATION, POWERS AND DUTIES.**

Messrs. Tucker, of New York.  
Baker, of Montgomery.  
Duganne, of New York.  
Fuller, of Monroe.

Hand, of Broome,  
Ketchum, of Wayne.  
A. R. Lawrence, of New York.

**ON TOWN AND COUNTY OFFICERS, OTHER THAN JUDICIAL, THEIR ELECTION OR APPOINTMENT, TENURE OF OFFICE, COMPENSATION, POWERS AND DUTIES.**

Messrs. Smith, of Fulton.  
Bickford, of Jefferson.  
Rolfe, of Kings.  
A. Lawrence, of Schuyler.  
Kinney, of Tioga.  
Sheldon, of Dutchess.  
Roy, of Albany.

**ON THE JUDICIARY.**

Messrs. Folger, of Ontario.  
Evarts, of New York.  
Comstock, of Onondaga.  
Van Cott, of Kings.  
Daly, of New York.  
Barker, of Chautauqua.  
Kernan, of Oneida.  
Hutchins, of New York.  
Masten, of Erie.  
T. W. Dwight, of Oneida.  
A. J. Parker, Albany.  
Andrews, of Onondaga.  
Hale, of Essex.  
Goodrich, of Tompkins.  
Pierrepont, of New York.

**ON THE FINANCES OF THE STATE, THE PUBLIC DEBT, REVENUES, EXPENDITURES, AND TAXATION, AND RESTRICTIONS ON THE POWERS OF THE LEGISLATURE IN RESPECT THERETO.**

Messrs. Church, of Orleans.  
Frank, of Wyoming.  
Corning, of Albany.  
Opdyke, of New York.  
Tilden, of New York.  
Clark, of Monroe.  
Van Cott, of Kings.  
Schell, of New York.  
W. C. Brown, of St. Lawrence.  
Nelson, of Dutchess.  
A. F. Allen, of Chautauqua.  
Hatch, of Erie.  
Carpenter, of Dutchess.  
Barto, of Tompkins.  
Hardenburgh, of Ulster.

**ON CANALS.**

Messrs. Lapham, of Ontario.  
Alvord, of Onondaga.  
Clinton, of Erie.  
Prosser, of Erie.  
Seymour, of Rensselaer.  
Beckwith, of Clinton.  
Schoonmaker, of Ulster.  
Hutchins, of New York.  
Champlain, of Allegany.  
Root, of Oswego.  
Bell, of Jefferson.  
Magee, of Schuyler.  
Prindle, of Chenango.  
Bergen, of Kings.  
Tappen, of Westchester.

**ON CITIES, THEIR ORGANIZATION, GOVERNMENT AND POWERS.**

Messrs. Harris, Albany.  
Opdyke, of New York.  
Murphy, of Kings.  
Francis, of Rensselaer.  
Paige, of Schenectady.  
Alvord, of Onondaga.  
Verplanck, of Erie.  
Bowen, of Niagara.  
Law, of New York.  
Fullerton, of Orange.  
E. Brooks, of Richmond.  
Graves, of Herkimer.  
Weed, of Clinton.  
Hand, of Broome.  
Chesebro, of Ontario.

**ON COUNTIES, TOWNS AND VILLAGES, THEIR ORGANIZATION, GOVERNMENT AND POWERS.**

Messrs. Hadley, of Seneca.  
N. M. Allen, of Cattaraugus.  
Lowrey, of Kings.  
Ferry, of Otsego.  
Fowler, of Madison.  
Corbett, of Onondaga.  
Wickham, of Suffolk.

**ON CURRENCY, BANKING AND INSURANCE.**

Messrs. Beadle, of Chemung.  
Huntington, of Oneida.  
Veeder, of Kings.  
Eddy, of Otsego.  
Armstrong, of Rensselaer.  
Ludington, of Sullivan.  
Hitchman, of New York.

**ON CORPORATIONS OTHER THAN MUNICIPAL, BANKING AND INSURANCE.**

Messrs. Ballard, of Cortland.  
Stratton, of New York.  
S. Townsend, of Queens.  
Krum, of Schoharie.  
L. W. Russell, of St. Lawrence.  
Hitchcock, of Washington.  
Barnard, of Kings.

**ON STATE PRISONS AND THE PREVENTION AND PUNISHMENT OF CRIME.**

Messrs. Gould, of Columbia.  
C. C. Dwight, of Cayuga.  
A. D. Russell, of New York.  
Cochran, of Westchester.  
Lee, of Oswego.  
Axtell, of Clinton.  
Conger, Rockland.

**ON THE PARDONING POWER.**

Messrs. M. I. Townsend, of Rensselaer.  
Pond, of Saratoga.  
Develin, of New York.  
Landon, of Schenectady.  
Prindle, of Chenango.  
Lee, of Oswego.  
Gerry, of New York.

**ON THE MILITIA AND MILITARY OFFICERS.**

Messrs. Morris, of Putnam.  
Seaver, of Franklin.  
Barto, of Tompkins.  
C. C. Dwight, of Cayuga.  
Cheritree, of Warren.  
Stratton, of New York.  
Hammond, of Allegany.

**ON EDUCATION AND FUNDS RELATING THERETO.**

Messrs. Curtis, of Kings.  
Archer, of Wayne.  
Conger, of Rockland.  
Gould, of Columbia.  
Beals, of Herkimer.  
Clinton, of Erie.  
Larremore, of New York.

**ON CHARITIES AND CHARITABLE INSTITUTIONS.**

Messrs. E. Brooks, of Richmond.  
T. W. Dwight, of Oneida.  
Strong, of Suffolk.  
Spencer, of Steuben.  
Ludington, of Sullivan.  
Silvester, of Columbia.  
Livingston, of Kings.

**ON INDUSTRIAL INTERESTS, EXCEPT THOSE ALREADY REFERRED.**

Messrs. Duganne, of New York.  
Gross, of New York.  
Farnham, of Allegany.  
Armstrong, of Rensselaer.  
Wales, of Sullivan.  
Case, of Madison.  
More, of Greene.

**ON THE SALT SPRINGS OF THE STATE.**

Messrs. Bell, of Jefferson.  
Comstock, of Onondaga.

C. E. Parker, of Tioga.  
McDonald, of Ontario.  
Rolfe, of Kings.  
Houston, of Orange.  
Young, of Ulster.

**ON THE RELATIONS OF THE STATE TO THE INDIANS RESIDING THEREIN.**

Messrs. Van Campen, of Cattaraugus.  
Silvester, of Columbia.  
Bergen, of Kings.  
Axtell, of Clinton.  
S. Townsend, of Queens.  
McDonald, Ontario.  
Colahan, of Kings.

**ON FUTURE AMENDMENTS AND REVISIONS OF THE CONSTITUTION.**

Messrs. E. A. Brown, of Lewis.  
Greeley, of Westchester.  
Robertson, of New York.  
Flagler, of Niagara.  
Murphy, of Kings.  
Grant, of Delaware.  
J. Brooks, of New York.

**ON PRIVILEGES AND ELECTIONS.**

Messrs. Landon, of Schenectady.  
Endress, of Livingston.  
Loew, of New York.  
Lowrey, of Kings.  
Mattice, of Ulster.

**ON PRINTING.**

Messrs. Seaver, of Franklin.  
Francis, of Rensselaer.  
Potter, of Erie.  
Merrill, of Wyoming.  
Jarvis, of New York.

**ON CONTINGENT EXPENSES.**

Messrs. Ferry, of Otsego.  
Williams, of Oneida.  
Cochran, of Westchester.  
Reynolds, of Monroe.  
Rodgers, of New York.

**ON ENGROSSMENT AND ENROLLMENT.**

Messrs. Sherman, of Oneida.  
Archer, of Wayne.  
Cassidy, of Albany.  
Cheritree, of Warren.  
Mattice, of Ulster.

Mr. CURTIS presented a petition from the Friends of Progress, assembled at Waterloo, N. Y., June 1st, 1867, in favor of female suffrage.

Which was referred to the Committee on the Right of Suffrage.

Mr. M. I. TOWNSEND presented a petition from Wm. H. Johnson, Chairman of the State Central Committee of colored citizens, praying for the establishment of equal manhood suffrage.

Which was referred to the Committee on the Right of Suffrage.

Mr. CLINTON presented a communication from A. G. Stephens, Esq., relative to the Bill of Rights.

Which was received and referred to the Committee on the Bill of Rights.

Mr. MASTEN—I desire to present a communication from Mr. Wm. H. Greene, a gentleman of scholarly attainments, a lawyer of eminence, learning and large experience. The subject of his communication is upon the code of procedure and the forms of actions, both legal and equitable, and upon pleadings.

The communication was received and referred to the Committee on the Judiciary.

The PRESIDENT presented a communication from the Commissioners of the Canal Department.

in reply to a resolution of the Convention requesting them to furnish a statement of the cost, revenues, &c., of the canals of this State.

Which was laid on the table and ordered to be printed.

Mr. FRANCIS, from the Select Committee on Printing *verbatim* reports of the proceedings of the Convention, submitted the following report and resolution :

Your committee, to whom was referred a resolution of inquiry as to the terms upon which *verbatim* reports of the proceedings of this Convention can be published in two or more newspapers of this city, have had the subject under consideration, and respectfully report :

It first became necessary to ascertain whether the power to contract for the performance of such work as was contemplated by the resolution was conferred by the terms of the law which created the Convention. Under the eighth section of the law referred to, the Comptroller and Secretary of State are "authorized and required to receive proposals and make contract for all the printing necessary for the said Convention."

Under this provision, a contract was made with Weed, Parsons & Co., of the date of May 16, 1867, for the printing of *Documents* at a compensation of \$11 for each 800 copies of 8 pages, to include all charges, and for each additional 100 copies of 8 pages, 66 cents; for *Journals*, each 800 copies of 8 pages, to include all charges, \$12.75, and for each additional 100 copies of 8 pages, 40 cents; for *Debates*, each 800 copies of 8 pages, each page to contain not less than 3,000 ems of brevier and nonpareil type, to include all charges, \$5.88, and for each additional 100 copies of 8 pages, \$1. The following paragraph appears in the advertisement for proposals issued by the Secretary of State and Comptroller, and, in the opinion of the latter officer, becomes a part of the contract with the Convention printers by virtue of the official acceptance of their proposals:

"Miscellaneous printing not coming under above heads, will be paid for at the rates current in the city of Albany at the time of the execution thereof."

These are all the provisions of the contract with the Convention Printers, bearing upon the subject of printing, its proceedings and debates. The law is silent with reference to *newspaper* publication of this matter, and under its express authority, such publication could only be secured by an arrangement with the Convention Printers.

But this would involve a compensation at "the rates current at Albany," in this case regulated by the charges for transient advertising—an expense much larger than is necessary to be incurred for the service. This plan being considered impracticable, the next question that arose was whether parties proposing for the work would be willing to go forward and perform it under direction of the Convention, without any fund from which their remuneration could be drawn—relying upon future action by the Legislature to secure payment for their service.

Propositions have been made to the Committee by the publishers of the Albany *Evening Journal* and of the Albany *Argus*, the proprietors of other newspapers here declining to offer terms for the

reason that they did not care to undertake the work. The *Journal* and *Argus* publishers respectively are willing to print the stenographic reports of the debates and proceedings, from day to day, in the regular editions of their papers, and at prices which your Committee consider liberal to the State, being considerably less than half the legal rates for publishing, to wit: Six dollars and a half per column for such publication in each paper, and to include the daily delivery of two copies of all the issues of their papers containing the proceedings and debates to each member of the Convention without further charge.

In this connection, your committee have given attention to a proposition germane to the subject-matter referred to them—that the proceedings and debates be published in pamphlet form under the contract with the convention printers, and distributed by the Convention. This method, while involving a larger cost, if estimated upon the basis of an equal circulation to be obtained by the newspaper publication as proposed, would also be attended with much additional labor, and fail to accomplish the ends desired. A pamphlet does not go into general circulation. It lacks the freshness, and does not secure the interest that attaches to the newspaper. It would be read by comparatively few persons.

A newspaper, on the other hand, is received everywhere, and comes under the observation of all classes. Circulate as many of the pamphlets as you may, still you will fail to reach the people and instruct them in the work of this Convention, as may be done by the newspaper publication of the full stenographic reports of its daily proceedings and debates.

The *Evening Journal* and the *Argus* are in a sense representative organs of the two great political parties, and the Convention debates published in their columns from day to day would be brought to the attention of a very large number of people, of a class interested in public questions, and would also be placed sooner than otherwise could be done, in the hands of newspaper editors throughout the State, who would be certain to make such excerpts from or comments upon them, as would attract the attention of the people to questions which they will be called upon to decide.

The inquiry is pertinent here, whether the advantages derivable from the publication as proposed would be sufficient to justify the expense to be incurred. Your committee assume that the sessions of the Convention will continue many weeks. Perhaps, when it adjourns, but a short time will elapse, as was the case in 1846, before the period when its work is to be submitted to the people for approval or rejection. In that brief intervening time, there will be little opportunity for stating and discussing the questions which have arisen and received attention here.

But if the proceedings and debates are published *in extenso*, as they transpire, and in a manner to secure their largest reading and study, discussions will begin with them at the outset, and when we adjourn, the public will have a full and accurate understanding of what we have accomplished. Certainly it is of the first importance



in connection with the great work committed to this Convention, that the people should be fully informed of its doings and the reasons in detail for all action taken here.

But an object, perhaps quite as important, will be accomplished by the proposed newspaper publication, in placing upon the tables of members daily the verbatim reports of the discussions which occur. An opportunity will thus be furnished to members to deliberately review the arguments advanced in the Convention while subjects are still under discussion, and while the measures proposed are still within their control. Relying upon the pamphlet publication of the debates, experience shows that there would be a much greater delay, thus in a measure depriving the Convention of the important advantages named.

Your Committee, therefore, are of opinion that the publication referred to is both feasible and proper, and in their opinion, the advantages that would result therefrom, fully justify the expenditure necessary for the purpose. They recommend the adoption of the following resolution:

*Resolved*, That the *Albany Evening Journal* and the *Albany Argus* be authorized to publish the daily reports of the proceedings and debates of this Convention, as furnished by the Stenographer, and furnish two copies to each member of the Convention, for a compensation of six dollars and fifty cents per column of solid brevier and nonpareil type for such publication in each paper named. Said reports to be printed in the regular editions of said papers; and that the next Legislature be requested to make the requisite appropriation for payment of the service.

J. M. FRANCIS, *Chairman*.

Mr. McDONALD—Mr. President: I am opposed to agreeing with the report of the committee for the following reasons: In the first place, it is admitted on the face of the report itself, that this Convention has no authority whatever to make this contract, or to enter into any agreement or any understanding with regard to it. It therefore involves this important question, which this Convention may be called on in a more direct and solemn form to pass upon. It involves the question whether the Legislature of this State shall be empowered or directed to pass upon claims arising in other bodies, or rather to pass judicially upon claims. I, for one, am opposed to the Legislature having anything to do with claims whatever; and I understand that there are other members of this Convention who are in favor of that same proposition. I therefore object that this resolution shall be thus passed upon, and that this question shall thereby be foreclosed, as it were; because if we pass this resolution we virtually call upon the next Legislature to make an appropriation in order to pay for this printing, and we thereby establish a precedent which after due deliberation we may think ought not to be established. The second objection I make is this, that it will not accomplish the object for which it is intended. It is claimed by the report of the committee that the entire object of this resolution is to disseminate among the people of the State a knowledge of the proceedings of this Convention. It would, I admit, disseminate a pretty general knowledge

in the counties of Albany and Rensselaer, but in the western, northern and southern parts of the State it would disseminate very little intelligence. In my own village which has a population of seven thousand, and a town population of nine thousand, there are, of those two journals, but six copies taken besides the exchanges with the papers. And outside the two counties of Albany and Rensselaer, and the adjoining counties, this would not accomplish the object that is desired. While I grant that with regard to these two counties the people should be as well informed as any others, I, at the same time, claim that if this Convention makes any appropriation for the purpose of disseminating knowledge of the proceedings therein among the people of the State as the entire people of the State have to pay for that appropriation, therefore the entire people of each and every part of the State should have the same advantages that can be obtained in this way, and that the debates should be distributed in such manner and way as that the entire people of each and every part of the State shall have such equal advantage, which, as I have shown, cannot be done in the manner in favor of which the committee report. My third objection is, that the same object can be obtained in a much cheaper way under the contract already made, and in a legal form, and in a form that will not bind this Convention in its future action, when it may come to consider it in a more deliberate manner, and that will not bind this Convention prematurely to a course of action which it might otherwise wish not to have taken. According to the contract which is already made, and under which we are acting—and which as I have said before, will be legal,—we can furnish a copy of these debates in a pamphlet form, provided they contain no more than one thousand pages, for \$1.25. This calculation of 1000 pages is on the basis of one hundred days' session, and of ten pages for each session, and on the basis of the debates of the Convention of 1846, which set for one hundred and nine consecutive days, and which from its beginning to its ending was about one hundred and thirty days in session. The proceedings of that Convention made 1131 pages, and I claim that a fair calculation for the proceedings of this is 1000 pages. For 1000 pages, as I have said, we can furnish a copy of the pamphlet for \$1.25, which is the price according to the contract. The Committee have neglected to state one thing, that the contract does not provide that the debates shall be published at all. It provides that if this Convention shall order any debates, then they shall be published in this manner, and at the price, as stated in the report, of \$735 for first 800 copies of 1000 pages, and \$125 for each additional 100 copies. I understand from Mr. Parsons that within three days, at the farthest, after these debates are had and the proceedings are approved in this body, they can be laid upon our tables, and usually within one or two days, so that, as far as we are concerned, we shall have the debates in a form which, as I have already said, is according to law. We have our covers arranged for them and we can have them in a form which any one will see is entirely preferable to the newspaper for For who will keep a file of the newspa

copy of the debates? But in the pamphlet form they can be furnished to us easily, so that we can refer to them at any time if we shall desire. In regard to the dissemination of the proceedings throughout the State at the rate they have been published, of twelve columns a day, as you will find by the publication of the *Evening Journal*, the cost to this Convention every day it meets will amount to \$144. Twelve columns, at \$12, is \$144, and \$144 a day for one hundred days, will amount to \$14,400. For that price we can disseminate throughout this State at least nine thousand copies of the pamphlet edition issued in two or three days after the debates, and pay the postage thereon. I submit, therefore, if it is desirable, (and I agree with the committee that it is,) to disseminate these proceedings among the people, that this Convention can disseminate far more information among the people of the State, and especially among the sections not immediately adjoining this city, if the nine thousand pamphlet copies of these debates were properly distributed. Let each member take twenty copies and send to the editor of each newspaper, and to each reading room, and to public citizens in his district, and let that citizen not have it in the form of a paper, but have it in such a form that he can refer to it at any time. I submit, in that way the people of the State will become far more conversant with regard to the proceedings of this Convention. I, therefore, am opposed to the adoption of this resolution; in the first place, because it is illegal. And I do not propose for one to start off, in the first days of this Convention, by committing it to the practice which, above all things, our Legislature ought to be prohibited from—passing upon and providing payment for illegal and unauthorized proceedings on the part of another body. I oppose it, in the second place, because it does not accomplish the object designed. I oppose it, in the third place, because with a far less legal expenditure of money, we can attain the object in a far greater degree, than by the illegal and unauthorized expenditure recommended by the report of the committee, and I therefore hope the resolution recommended by the Committee will not pass.

Mr. M. I. TOWNSEND—This subject, sir, is comparatively new to me at least, and it is impossible to understand it without being able to read the report, and for that reason I move that the report be laid upon the table and printed.

The question being put upon the motion of Mr. Townsend it was declared to be carried.

Mr. SMITH offered the following resolution:

*Resolved*, That the Committee "on the Right of Suffrage and Qualifications to Hold Office," be instructed to inquire into the expediency of reporting a Constitutional provision, permanently excluding from the right to the elective franchise, all persons who may be convicted by a court of record of having received money or other valuable thing to influence or reward their vote, and to make the offense, with or without such conviction, a cause of challenge and disfranchisement at the polls.

Mr. SEAVER—I move to amend the resolution by inserting after the word "received" the words, "or to have paid or offered to pay."

Mr. KETCHAM moved that the resolution be laid on the table and printed. Which was carried.

Mr. L. W. RUSSELL offered the following resolution:

*Resolved*, That Committee No. 9 be instructed to inquire into the expediency of reporting an amendment to the Constitution prohibiting the allowing or giving extra compensation to any public officer, agent or contractor, after the work shall be completed, or the contract entered into.

The question was put on the resolution of Mr. L. W. Russell, and it was declared adopted.

Mr. GOULD offered the following resolution:

*Resolved*, That the Secretary of this Convention be directed to procure from the several County Clerks in this State, as soon as practicable, a statement embracing the following particulars from the years 1857 to 1866, both inclusive:

1st. The number of indictments found in each year in all the criminal courts of the county.

2d. The number of persons admitted to bail in each county in each year by said courts.

3d. The aggregate amount of bail taken in each year in the courts of record.

4th. The aggregate amount of bail ordered to be estreated in each year.

*Resolved*, That the Secretary be directed to procure from the several County Treasurers of this State, the amount of money paid to them on account of forfeited bail, in each of the years from 1857 to 1866, inclusive.

Which was laid over under the rule.

Mr. HADLEY offered the following resolution:

*Resolved*, That the Clerk of the Court of Appeals report to this Convention, with all convenient speed, the total amount of all funds and securities now held by him in trust, under any order, judgment or decree of any court, including the late Court of Chancery. And that he specify the total amount of such funds and securities, which has remained with said Clerk or his predecessors for more than twenty years, if any.

*Second*—The total amount of such funds and securities that has so remained for fifteen years and less than twenty years.

*Third*—The total amount of such funds and securities that has so remained for ten years, and less than fifteen years.

*Fourth*—The total amount of such funds and securities that has so remained for five years, and less than ten years.

*Fifth*—In what manner such funds are invested and secured, and at what rate of interest.

Which was laid over under the rule.

Mr. COLAHAN offered the following resolution:

*Resolved*, That this Convention take into consideration the necessity of amending the present Constitution of this State so that the cities of New York and Brooklyn, and all cities and municipalities of this State, be secured and protected in the administration of their respective local governments from infringement on their rights and powers, and from partisan and partial legislation on the part of the Legislature of this State. And that this Convention consider the system of special legislation and existing commissions as enacted for and made more particularly applicable to the cities of New York and Brooklyn, by recent State legislation.

Which was referred to the Committee on Cities.

Mr. FULLER offered the following resolution :

*Resolved*, That the first section of the second article of the Constitution of the State of New York be amended by striking out therefrom the following words :

"But no man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding any election, shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated, and paid a tax thereon, shall be entitled to vote at such election. And no person of color shall be subject to direct taxation unless he shall be seized and possessed of such real estate as aforesaid."

And that the said Constitution be further amended by striking out therefrom the words "persons of color not taxed," wherever they occur in other articles thereof.

Which was referred to the Committee on the Right of Suffrage.

Mr. HALE offered the following resolution :

*Resolved*, That the Committee on the Organization of the Legislature, be instructed to inquire into the expediency of providing some system by which a more equal and just representation of all the electors, minorities as well as majorities, may be secured; and that, with this view, they be respectfully requested to investigate the system originated by Mr. Thomas Hare, and recently proposed in the English Parliament by John Stuart Mill.

Mr. HALE moved that the resolution be referred to the Committee on the Organization of the Legislature, &c.

Which was ordered.

Mr. C. L. ALLEN offered the following resolution :

*Resolved*, That the Committee on the Judiciary be instructed to inquire into the expediency of enlarging the powers and duties of County Courts, and extending their original jurisdiction, with power to hear, try and determine all actions the causes for which shall arise in their respective counties, and where the amount in controversy shall not exceed the sum of \$500, excepting actions for the recovery of the possession of real property.

Mr. EDDY moved to amend by making the sum one thousand dollars in lieu of five hundred.

Mr. C. L. ALLEN accepted the amendment.

The question was then put upon the resolution as amended, and it was declared adopted.

Mr. HARRIS offered the following resolution :

*Resolved*, That the Tax Commissioners of the City of New York be requested to furnish to this Convention a statement of the number of taxpayers in the city of New York, as the same appears from the records and documents in their office; distinguishing, as far as practicable, between those assessed for real estate and those assessed for personal property.

Which was laid over under the rule.

Mr. BICKFORD offered the following resolution :

*Resolved*, That the Committee on the Preamble and the Bill of Rights, be instructed to inquire and report as to the expediency of so modifying

section 5 of the Bill of Rights, as to provide that no witness shall be detained who shall tender his own recognizance to appear and testify, and shall prove by his own oath or otherwise, to the satisfaction of the Court, or a judge on *habeas corpus*; that he or she is unable to give a recognizance with sufficient sureties.

Also, as to the expediency of striking out of section 7 all that relates to Private Roads.

Also, as to the expediency of striking out section 9, and inserting in its stead the following. "The Legislature shall pass no bill appropriating the public moneys or property for local or private purposes."

Also, as to the propriety of adding, at the end of section 2, the words, "But the Legislature may by law provide that a jury may consist of any number of jurors not less than six or more than twelve."

Also, as to the propriety of striking out section 14 of the Bill of Rights, and also of so amending it as to strike out the word "twelve," and insert the word "twenty."

Also, as to the expediency of inserting in section 10, after the words "judicial proceedings," the words "and for causes rendering the marriage contract void from the beginning, and for crime or adultery."

The question was then put on the resolution of Mr. Bickford, and it was declared adopted.

Mr. AXTELL offered the following resolution :

*Resolved*, That the Committee on the Judiciary be directed to inquire as to the expediency of abolishing the jurisdiction of Justices of the Peace in civil causes, and establishing minor courts in the several towns to be held by the County Judges for the trial of such civil causes as are now triable by Justices of the Peace, and report to this Convention.

The question was then put on the resolution of Mr. Axtell and it was declared lost.

Mr. BAKER offered the following resolution :

*Resolved*, That the Comptroller of this State be requested, at as early a day as practicable, to report to this Convention the whole amount of moneys appropriated by the Legislature of this State, and paid by the Comptroller to the several local private institutions called charitable institutions, not chartered by the Legislature from 1857 to 1867, both inclusive, giving the name and location of each institution so receiving such appropriation, and the amount received in each year during the time aforesaid.

Which was laid over under the rule.

Mr. S. TOWNSEND offered the following resolution, and moved that it lie upon the table :

*Resolved*, That Committee No. 2 (on the Legislature, its organization, etc.), be requested to take under consideration, and report to this body upon the policy of providing that the House of Assembly consist of 100 members, to be elected yearly from single districts; that the Senate consist of eight members, one elected from each judicial district, for the term of eight years, one each year on general ticket. That the sole power of initiating and enacting laws, be vested in the Assembly; that the legislative power of the Senate shall consist of considering and revising such acts as may be passed by the Assembly. That the salary of



Senators be \$5,000 and of Assemblymen \$1,000 per annum. Which was laid upon the table.

Mr. TAPPEN offered the following resolution and asked that it be referred to the appropriate committee.

*Resolved*, That the following amendments be incorporated in the Constitution.

1st. That the Legislature hold one annual session, commencing on the first Tuesday in December in each year.

2d. That the Senate be increased to forty members, of whom thirty-two shall be elected by Districts, and eight shall be elected by the State at large.

3d. That the compensation to Members of the Legislature be one thousand dollars for the session in full of all pay, mileage and stationery.

Which was referred to the Committee on the Legislature, its Organization, &c.

Mr. GREELY—The resolution as read seems to be a resolution of instruction to the Committee. The form of the resolution should be a resolution of inquiry. If it is a resolution of instruction I shall object to it.

The PRESIDENT—The Chair rules no instruction has yet been made to the Committee; that that must be done by the Convention. It is simply referred for their consideration.

Mr. BICKFORD, offered the following resolution:

*Resolved*, That Committee No. 4, on the Right of Suffrage, be instructed to inquire into and report on the expediency and propriety of extending the elective franchise to native born male citizens of this State, between the ages of 18 and 21.

Mr. TILDEN moved that the resolution be referred to the Committee on the Right of Suffrage.

The PRESIDENT—If it is a resolution of instructions the chair holds that the instructions should come from the Convention.

Mr. TILDEN—I would suggest for the convenience of the Convention that a different form be adopted in drawing up resolutions intended to be referred.

The PRESIDENT—The resolution giving rise to debate it will lie over under the rule.

Mr. AXTELL offered the following resolution, and moved that it be referred to the Committee on the Right of Suffrage.

*Resolved*, That the following article be inserted in the Constitution:

**SECTION 1.** Every male citizen of the age of 21 years, who shall have been a citizen for ten days, and an inhabitant of this State six months next preceding an election, and for the last three months a resident of the county where he may offer his vote, shall be entitled to vote at such election, in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or may be elected by the people, but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers to vote.

**SEC. 2.** All persons who have been or may be convicted of bribery, or of giving or receiving a bribe for their votes, of larceny, or of any infamous crime, all deserters, or persons whose names appear upon the military records of this or of any of the States, as deserters from the military service of the United States, and all persons who have been voluntarily engaged in rebellion against the United States, shall be excluded from the right of suffrage; and the Legislature shall

provide by law a test-oath for the exclusion of such persons from the elective franchise.

**SEC. 3.** All persons born or naturalized in this State, and resident therein, and all citizens of the United States, resident in this State, are citizens of this State.

Which was referred to the Committee on the Right of Suffrage.

Mr. HARRIS—I ask for the consideration of the motion made by me yesterday, to reconsider the vote on the resolution offered by the gentleman from Madison [Mr. Case].

The SECRETARY then proceeded to read the resolution of Mr. Case, as follows:

*Resolved*, That the Committee on the Powers and Duties of the Legislature be requested to report at an early day, for the consideration of this Convention, an amendment to the Constitution, prohibiting the Legislature making any appropriations or donations of money to any private or local, charitable or religious institutions or corporations, and whenever any appropriations are made by the Legislature other than for purposes of Government and State Institutions, such appropriations shall be made to each and every County of the State, ratably, according to population, as shown by the last preceding census.

Mr. HARRIS—I have no objection to the enquiry, but this is a resolution of the Convention requesting the Committee to report an amendment to the Constitution which may be regarded as in the nature of an instruction. If the proposition shall be altered so as to request the committee to inquire into the expediency of reporting such an amendment, I have no objection to its passing if the mover of the resolution will modify it in that form.

Mr. CASE—I accept the modification.

The PRESIDENT—That can only be done by unanimous consent.

There being no objection the question was then put on the resolution of Mr. Case, as modified, by consent of the mover, and it was declared adopted.

Mr. POND offered the following resolution:

*Resolved*, 1st. That the Committee on the Judiciary be instructed to inquire into the expediency of so modifying the Constitution as to permit juries in civil causes to render verdicts, upon the agreement of a number less than the whole.

2d. Also to inquire into the propriety of so amending the Constitution as to prohibit the receipt by all judicial officers, including Justices of the Peace, of any fee or perquisites of office as a compensation for their services, or otherwise.

The question was then put on the resolution of Mr. Pond, and it was declared adopted.

Mr. VERPLANCK offered the following resolution:

*Resolved*, That the National Guard of this State (to be composed of volunteers), shall, in time of peace, consist of not exceeding twenty-five thousand, officers and men, to be uniformed, armed and equipped at the expense of the State; the organization and discipline to conform to that of the army of the United States.

Which was referred to the Committee on Militia and Public Defense.

Mr. HARRIS offered the following resolution:

*Resolved*, That the Committee on the Judiciary, Finance, Canals and Cities, each be authorized to employ a clerk for their respective committees.



Mr. BICKFORD—I would inquire of the gentleman from Albany [Mr. Harris], through the Chair, whether he is aware of any provision of law for the payment of the clerks proposed by his resolution.

Mr. HARRIS—I am not aware of any special provision in the law under which this Convention was called, but I suppose that their pay would come out of the contingent fund, or perhaps not until the Legislature shall provide for it. But it is certain that each of these committees, consisting of fifteen members, will require a clerk, and therefore I offer the resolution.

The question was put on the resolution of Mr. Harris and it was declared adopted—ayes 72, noes 26.

Mr. ROBERTSON offered the following resolution:

*Resolved*, That the Committee on the Right of Suffrage inquire into and report on the expediency of extending the right of suffrage to all male white citizens of the age of eighteen years.

The question was put on the resolution, and it was declared lost.

Mr. BICKFORD offered the following resolution:

*Resolved*, That it be referred to Committee No. 9 on the Finances of the State, &c., to inquire as to the expediency and propriety of a Constitutional provision that no property, real or personal, in this State, shall be exempt from taxation for State, county or municipal purposes, except so far as it is made exempt by the laws of the United States or as it is now exempt by laws of this State, having the force or being in the nature of contracts; and except as to property owned by the State, or by any county, town, city, or school district in its corporate capacity, and except as to places set apart and used as places of public worship, or exclusively for charitable purposes.

Which was referred to the Committee on Finance.

Mr. LIVINGSTON offered the following resolution:

*Resolved*, That all laws relating to the elective franchise, shall be uniform throughout the State.

Which was referred to the Committee on the Right of Suffrage.

Mr. AXTELL moved a reconsideration of the vote by which the resolution offered by him in reference to county judges, &c., was declared lost.

Which motion was ordered to lay over under the rule.

Mr. OPDYKE offered the following resolution:

*Resolved*, That the Committee on Education be instructed to enquire into the expediency of inserting a provision in the Constitution making education compulsory.

The question was put on the resolution of Mr. Opdyke and it was declared adopted.

Mr. ALVORD—Mr. President: Having very serious doubts whether members generally understood the resolution of the gentleman from Albany, [Mr. Harris] which provided for clerks for certain committees, I move a reconsideration of the vote by which the resolution was adopted.

Which motion was ordered to lay over under the rule.

Mr. BICKFORD offered the following resolution:

*Resolved*, That it be referred to Committee No. 2, on the Legislature, its organization, &c., to inquire as to the expediency and propriety of providing for the election of 180 members of the Assembly and of 45 members of the Senate; 144 of the members of Assembly to be elected in districts entitled to elect not less than three nor more than six members, and the other 36 to be elected for the State at large, as personal representatives, each elector throughout the State to be entitled to vote for one personal representative in the Assembly, and the 36 receiving the highest number of votes, to be elected; also, each elector throughout the State to be entitled to vote for one personal representative in the Senate, and the 9 persons receiving the largest number of votes, to be elected; and the other 36 Senators to be elected in districts entitled to elect one Senator only.

Which was referred to the Committee on the Legislature, its Organization, &c.

Mr. SILVESTER pursuant to previous notice offered the following resolution:

*Resolved*, That Rule 32 be amended by adding as subdivision 9 the following:

"Such ladies as may be invited by any members, but such right of invitation to cease whenever the sofas are filled."

Mr. SILVESTER — Mr. President, I desire simply to say that while the rules were under consideration, I offered an amendment similar to the one suggested, but which was not adopted by the Convention. I hope—

The PRESIDENT—The motion is not debatable. The question is on the adoption of the resolution.

Mr. ALVORD—I believe, Mr. President, according to our rules, although they have not yet been laid on our desks, that in order to change a rule, the vote of a majority of the members of the Convention is required.

Mr. PRESIDENT—It requires two-thirds of those present or a majority of all the members.

Mr. ALVORD—Then the sense of the Convention cannot be taken except by ayes and noes.

Mr. A. J. PARKER moved to lay the resolution on the table.

Which was carried.

Mr. M. H. LAWRENCE—Two days since I offered a resolution proposing that a committee of seven be appointed, whose duties should be to investigate into the existence of superfluous offices. A complaint is frequently made that the people of this State are paying taxes for needless offices. It was with a view of entering upon an inquiry into that subject that I offered this resolution for the appointment of such a committee. I think that in the report of the Committee of Sixteen, they have not provided for any appropriate committee for that purpose. Now, I have the honor to represent an agricultural district, and it is quite a common complaint that we have a host of needless offices, the existence of which imposes additional taxation upon the State. My constituents are able and willing to pay all necessary expenses for their government—

The PRESIDENT—There is no question before the Convention. Will the gentleman make a motion in reference to his resolution.

Mr. M. H. LAWRENCE—My motion is to take

the resolution from the table. The President of the Convention of 1846 stated that one of the great works which had been accomplished by that Convention was the abolition of a host of useless offices. I suppose it would be an appropriate field of inquiry in this Convention to ascertain whether any superfluous offices now exist. It was with a view of such an investigation that I offered the resolution proposing this inquiry. I do it because there is no proper committee to pursue an inquiry into the subject.

The SECRETARY proceeded to read the resolution of Mr. Lawrence, as follows:

*Resolved*, That the Chair appoint a committee of seven, whose duty it shall be to examine into and report to this Convention what offices, if any, may be abolished without detriment to the public service, and especially of those created by law since the revision of the Constitution of 1846.

Mr. HARRIS—I hope that such a committee will not be appointed. It is a very important and appropriate inquiry suggested by the gentleman, but which may very well be referred to the Committee on Towns, Counties and Villages, their Organization, Government and Powers. If there be any useless offices as the gentleman has suggested, the matter can be referred to that committee. I move, therefore, that the subject be referred to the Committee on Towns and Counties.

Mr. GREELEY—Mr. President I trust not. There is a body called the Board of Regents of the University, and I wish an inquiry instituted as to the utility of that body. That subject could not be properly referred to the Committee on Towns and Counties, and I hope that the Convention will order an inquiry made to see what offices can be dispensed with, and which could not be properly inquired into by the Committee on Towns and Counties.

Mr. HARRIS—Really my friend from Westchester, [Mr. Greeley,] has industriously found out that there is a set of State officers that are not provided for by the committees at present appointed. I suppose that all these State officers have been provided for by these committees, but the Regents of the University. If the gentleman chooses to raise a committee with reference to the Board of Regents, I shall have no objection; but it seems to me that that is the only case which is not provided for. I hope that the inquiry asked for by the resolution of the gentleman from Yates, [Mr. M. H. Lawrence,] will go to the Committee on Towns and Counties, and their government.

Mr. M. H. LAWRENCE—With all due respect to the gentleman from Albany [Mr. Harris], I had in my mind an entirely different class of officers. As I said before, the President of the Convention of 1846, stated the fact that they had secured the safety of the school fund. I have my doubts, Mr. President, whether that fund is secure, for that money raised from the several counties is in the hands of one hundred and twenty different officers, and rumor has it, the fund is not altogether safe. It was with a view to the entrance upon this inquiry that I offered the resolution, which I think is proper, and I think the people of this State will recognize this as a proper body to investigate these abuses, if they do exist. And with all

due respect to the gentleman from Albany [Mr. Harris], I think the matter does not pertain to the Committee on Towns and Counties, for the officers I had in view do not belong to towns and counties, they are State officers, and are appointed by the executive or otherwise.

Mr. CLINTON—Mr. President; I am a little surprised, unless perhaps I misunderstood the gentleman from Albany [Mr. Harris]. I have no doubt but the Board of Regents of the University of the State are, in one sense, an antiquated body, but they certainly have proved to be a useful body, and a body which, from its very commencement down to this day, has been composed of honorable gentlemen who have served the State and the cause of education without compensation. I would ask the gentleman from Albany, [Mr. Harris] whether the inquiry as to that body, and as to its utility, and whether it is desirable to continue or do away with it, is not referable to, or properly inquirable into, by the Committee on Education and the funds relating thereto. They have the charge of a portion at least, of the funds relating to education, and they have much to do with the management, direction and incorporation of the academies and colleges of this State. Whatever I may think of the body itself, their functions are high and honorable and I am surprised to find the gentleman from Albany [Mr. Harris] characterizing it as antiquated, and treating it as though he considered it a worthless body.

Mr. HARRIS—Mr. President, I certainly have no intention to cast any dishonor upon that antiquated body called the Regents of the University. It is an antiquated body, but it is composed of excellent, venerable and useful men. I have as high respect for them as the gentleman from Erie [Mr. Clinton]. I intended no disrespect to them whatever. I have long thought, however, that the organization might be greatly improved; I think so now, but I doubt whether it is a matter coming properly within the province of this body. I think it is a matter rather for the Legislature to consider than for this Convention; but I agree with the gentleman from Erie [Mr. Clinton], if there is anything to be done in respect to it, it properly belongs to the Committee to which he has alluded,—the Committee on Education. As to all the other State officers, the subject is properly referred to other committees, and I think the gentleman from Yates [Mr. M. H. Lawrence] will find his object accomplished through the Committee on Towns and Counties, and their government. I cannot imagine that there is any case which is not already provided for by our committees, and I hope my motion will prevail.

Mr. MERRITT—I move to amend by substituting another committee.

The PRESIDENT—A motion to amend is not now in order; the question is upon the motion of the gentleman from Albany [Mr. Harris.]

Mr. CHURCH—I think there is no subject properly brought before the Convention, which is not already within the jurisdiction of some committee appointed by this body. I am opposed to the multiplication of other committees, it will lead to inextricable confusion in the business of this Convention, and I move therefore to lay this motion upon the table.

The question was then put on the motion of Mr. Church and it was declared carried.

Mr. MERRITT moved that the Convention adjourn.

Mr. PRESIDENT—The Chair desires respectfully to call the attention of the gentlemen of the Convention to Rule 11, which the Secretary will read.

The SECRETARY proceeded to read the rule as follows:

"Rule 11. When a motion to adjourn, or for a recess, shall be affirmatively determined, no member or officer shall leave his place till the adjournment or recess shall be declared by the President."

The question was then put on the motion of Mr. Merritt, and it was declared carried.

THURSDAY, June 20, 1867.

The Convention met at eleven o'clock A. M.

Prayer was offered by the Rev. CHARLES GRAVES.

The Journal of yesterday was read by the Secretary.

Mr. SMITH—To the resolution I had the honor of introducing yesterday there was an amendment offered, and the Journal makes me to have accepted it. That is a mistake; I did not accept it, because the resolution as amended did not express my views.

The Journal was ordered to be corrected in that respect.

There being no further objection, the Journal was declared approved.

The PRESIDENT—The Chair desires to make the following explanation:

In the final completion of the list of standing committees announced yesterday, the name of Mr. Ely, of Monroe, who had been assigned a position, was inadvertently omitted. The Chair deeply regrets the error, and by the consent of the Convention, and of Mr. Hand, of Broome, places Mr. Ely upon the Committee "on the Secretary of State, Comptroller, &c.," in place of the former gentleman. This explanation and order will be entered on the Journal at large.

Mr. CORBETT offered a memorial from the citizens of Syracuse, asking for the adoption of a constitutional provision, securing the right of suffrage to both men and women.

Which was referred to the Committee on the Right of Suffrage.

Mr. FULLER—I desire to present the outlines of a plan for the reorganization of the judiciary, drawn up by an able jurist, late a judge of the Court of Appeals, who was promoted to the bench of that court from the Supreme Court, and who is fully acquainted with the facts and workings of our judicial system in all its branches, and which plan also has been approved by another ex-judge of the Court of Appeals, an eminent jurist. I desire that it may be received and referred to the Committee on the Judiciary.

The memorial was referred to the Committee on the Judiciary.

Mr. GRAVES—I desire to present a memorial from Mrs. F. D. Fish and one hundred and eighty other citizens, worthy and intelligent men and

women of the city of Utica, asking for equal rights for men and women.

The memorial was referred to the Committee on the Right of Suffrage.

The Chair presented the following communication:

ALBANY, June 18th, 1867.

Hon. W. A. WHEELER.

Dear Sir:—The undersigned in behalf of the Common Council, would most respectfully ask of your honorable body, the use of the Assembly Chamber, for the celebration of the approaching anniversary of American Independence.

OSCAR L. HASCY,  
Chairman Common Council Committee.

Mr. E. BROOKS moved that the request be granted.

Which was carried.

Mr. FRANCIS—I move that the Convention take up the report of the Select Committee, in reference to the publication of the debates and proceedings of the Convention, in two of the Albany newspapers.

The question was then put on the motion of Mr. Francis, and it was declared to be carried.

Mr. FRANCIS—Mr. President, the gentleman from Ontario [Mr. McDonald] opposes the publication of the report of the proceedings and debates of this Convention, in the *Albany Journal* and the *Argus* on the terms proposed, on the ground that there is no authority in law for such an arrangement. It is true, sir, that the law is silent on the subject of newspaper publication of this matter. We assume so much as this, and simply recommend an appropriation by the next Legislature to meet what is deemed a proper, if not necessary expense. This Convention, I suppose, possesses certain inherent powers not specifically defined by legislative enactment—powers requisite to the convenient arrangement and dispatch of its business. The people have delegated to the Convention a higher authority than the Legislature possesses; and to say that it cannot, in the exercise of that authority, proceed a step beyond the powers which legislation has conferred, is to assume that the Legislature is superior to the people—that the agent is greater than the principal. Bear in mind, this Convention was called by the people, not by the Legislature; the Legislature only undertook to carry into effect the popular will by its subsequent action. Wherein it may have failed to make proper provisions for the carrying on our work, the Convention itself may, I take it, supply the deficiency—and, as in this case, recommend an appropriation by a future Legislature to defray the necessary expense. But we are told that the publication in the newspapers as proposed, will involve a needless and very large expense, and the gentleman from Ontario [Mr. McDonald,] states the cost at \$14,000, if the proceedings and debates shall comprise matter to the extent of a volume of 1,000 pages of the usual document size. I have it in my power, sir, to correct the gentleman's statement. By actual measurement the 1,000 pages referred to are equal to 572 columns of the "*Albany Journal*." For publication in two papers of the 572 columns at \$6.50 each per column, we have \$7,436 as the cost. This is.



little more than one half the estimate of the gentleman, and serves to show that he has based his argument upon erroneous premises. It is insisted that the pamphlet publication by the Convention Printers will serve us better and at much lower rates, and we are assured that the printers will in no event be more than three days behind in placing the debates upon our files. Now I beg leave to differ with this opinion. Even in the publication of the Assembly journals during the sessions of the Legislature, with much less matter than our debates will comprise, the printer has usually been behind from three days to one week, and in some instances a still longer period. Now, bear in mind this matter, equal to eight or ten columns per day, must be put in type, proof read and corrected, then stereotyped and made up and worked in separate book forms. I undertake to say, sir, that, judging from experience, we shall be extremely fortunate if, with the pamphlet publication, we are enabled to keep up our files within four or five days of date. Then again, sir, if we undertake to circulate these pamphlet issues there will probably be a day's delay in mailing, there will be the postage of two cents upon each copy sent, and the matter itself will become stale before it reaches those to whom it may be addressed. Is this the proper method to reach the public mind and inform the people of our doings here? Is it the proper course to pursue for our own enlightenment in the great work we have to do? But there is this further consideration that is worthy of attention. Members of this Convention will not all be here during our discussions. Some will be absent not unfrequently for days at a time. Published in the newspapers, the full debates will promptly reach them, and while the subjects discussed are still fresh. The absentees will thus be enabled to instruct themselves in our work, and be better prepared to act and vote intelligently here. We have evidence already as to the promptitude with which publication of the debates is made by the newspapers. With four papers containing the debates delivered to each member of the Convention, all will be abundantly and promptly supplied for present use and future reference. The circulation of the two papers named is not principally nor mainly confined to this locality as has been stated. It reaches every section of the State, and includes every newspaper of this State as exchanges. But the fact still remains that pamphlets are little read, and newspapers are generally read. The pamphlets with the debates, days behind date, would fail to answer our purpose and that of the public, as a means of instruction in the important business of this Convention. The newspaper publicity would meet this object, enabling us the better to discharge our duties intelligently, at the same time spreading before the people information of the highest importance, as bearing upon the question of the approval or rejection of the amended Constitution at the ensuing general election.

Mr. E. BROOKS—I propose to introduce a proviso to the majority report, to go in at the close of the resolution, to read as follows:

*Provided, That the expense of printing the debates in the two journals named shall not ex-*

ceed the sum of \$10,000, or \$5,000 to the *Journal*, and \$5,000 to the *Argus*, and provided further that the business and debates shall be published at the latest, within twenty-four hours after each session of the Convention.

Mr. FRANCIS—If the gentleman will make the sum \$12,000, I will be happy to accept the amendment.

Mr. E. BROOKS—Mr. President; the cost of these debates must depend entirely upon the length of the Convention—the sessions of the Convention. If we are to sit here one hundred and twenty days as has been intimated, or if we are to hold prolonged sessions of the Convention even for one hundred days, probably the sum named would be requisite to pay the expenses of this publication; but I have heard, perhaps incorrectly, that the amendment which I proposed would be satisfactory, and it was with that view that I limited the amount to \$10,000. I certainly should be extremely unwilling to put that limitation in the amendment unless I believed it would be a fair compensation for the work to be done. The gentleman from Rensselaer [Mr. Francis], who is a publisher and a printer, and who has given very considerable time and attention to this subject necessarily knows more of the subject than I do, and, therefore, at his suggestion, believing it not to be an unfair one, I will accept the modification.

Mr. GREELEY—I have listened with great attention to the report and also to the remarks of the Chairman of the Committee, for some light upon one question of considerable importance, and that is, supposing these debates to be as we hope they may be, such as the people of the State of New York will wish to read, what reason is there for paying at all for their publication? That question I do not find answered, either in the report, or the speech of my excellent friend from Rensselaer [Mr. Francis]. In my judgment if the matter to be printed is such as the people want to read, they will pay for printing it. If either of the journals in Albany had one month ago advertised that it would publish full and accurate debates of the proceedings of this Convention for a certain price—the usual price of that journal—say for three months, I am very confident that the additional subscriptions would be abundantly sufficient to defray this cost. For, Mr. President, I understand this to be the state of facts, that we of the Convention, as we have been virtually instructed through the Legislature, have elected a Stenographer, competent, prompt and able, who reports at our expense, and not that of the journals of Albany, the debates of this body. It is our report, paid for by the people of the State of New York, that these journals will publish, if they publish any; they simply take the report—as is very proper and entirely right—and I hope it will be always open to every journal—for which the people pay, which we have employed competent persons to make, and they print it in their journals, it having cost them nothing up to the time it is prepared for the press. It seems to me if we are to furnish this matter ready for the press, and the people of the State of New York, want to read it, and these two Journals are circulated almost exclusively within the borders



of this State, and taken I may say almost entirely by people who would be likely to take an interest in these proceedings, I cannot comprehend the necessity or the justice of any payment whatever. If it were published, say in a New York City journal, the publisher might say "My circulation is mainly or largely in other States than New York, and your proceedings will not interest my subscribers or readers,"—and I think there might be a color of right in this statement. But I think there should be no claim to compensation for printing matter of interest to the great body of their readers; but for these two journals I say, and I trust with sufficient humility, that I believe the proceedings of this Convention will be as interesting to their readers as almost any other matter with which they can fill their columns, and, therefore, I conclude if we furnish the matter ready for the press and they print it, the bargain will be a fair one on our part and favorable to them, in case we give them no money and ask them for none. In that conviction, Mr. President, and believing that we should be very careful in expending money which is not provided for by the act calling us together; believing that only a very urgent necessity should constrain us to expend so much as \$12,000 for the purpose of enlightening a very moderate portion of the people of the State in regard to our doings, I object to the resolution, and I ask the ayes and noes on its passage.

Mr. FULLER—This subject of the publication of the debates of this Convention, is one of considerable importance, and one upon which I, being ignorant of these matters, desire more light. I do not understand that this Convention have, as yet, made any order upon this subject, or have contracted for the publication in any form. I understand that the report of the committee contemplates their publication only in these two daily papers. If that is the only publication there is to be made of the debates of this Convention, I am free to say that while I should desire to read them, from day to day, yet it will be a very unsatisfactory way in the end, and I desire that the debates of this Convention, which will be, in importance, second only to its journal, shall be in some more permanent and some more accessible form, to which we may have recourse hereafter for the construction of the Constitution which we may adopt, as well as, from day to day, during the sitting of this Convention. It seems to me this is the more important publication of the two, and it is very desirable that the debates of this convention, which will be important not only to us, but to those who are to come after us, and to courts and Legislatures, should be published in a permanent form, as were the debates of the last Convention, and also in a convenient form.

Mr. DUGANNE—I would answer the gentleman who spoke last, [Mr. Fuller] by informing him that a contract has been made by the Comptroller for the publication of the debates of the Convention in a pamphlet form, and that this press publication in the daily papers, is added to the original contract, or is a supplementary contract to be made by them.

Mr. FULLER—Then I would like to make this further inquiry, whether this cannot be done

without all this additional expense, by a simple transfer of the type of the papers into the pamphlet form.

Mr. ALVORD—I understand the fact to be mainly as stated by the gentleman from New York [Mr. Duganne,] but still it wants this explanation—that the contract is to be made by the Comptroller of this State, in case the Convention require it; that we have got to act affirmatively in regard to the matter before these debates can be printed at all. The question seems to me to resolve itself simply into the question, whether or not we shall go outside of the liberty and the power which has been given to us by the Legislature with regard to this matter, and undertake to make a debt for a future Legislature to pay. It strikes me that the gentleman from Westchester [Mr. Greeley] is eminently right, that if these papers in Albany do not publish these debates they will be the losers, and that they can well afford to take from the hands of our Stenographer each and every day this matter, without any expense to them in its preparation, and put it in their daily journals as a means of their support among those who are the patrons of the papers, and it would be invidious on our part to select the two papers of this locality, because they happen to be here, and pay them six thousand dollars a piece, for publishing these debates, when as a matter of necessity they are so curtailed in their circulation, that there are many papers in the interior of the State that absolutely go to more people than the papers of this city which are here spoken of. But, above all else, I am opposed, except when driven by absolute and sheer necessity, to violating, in any regard, the financial programme laid down by the Legislature. The people of this State have complained over and over and over again, in regard to the Legislature itself, that either by implication or by direct violation of law, they have gone on and made expenditures of large sums of money, under the name of the contingent expenses of the two houses in their annual sessions, to such an extent that it is necessary, if we do our duty here, for us, by absolute constitutional prohibition, to put an end to it. We shall, with a very bad grace, come forward and undertake thus to tie up subsequent legislation in that direction, if we commence here at the very outset to violate the principle ourselves. I, therefore, am decidedly in favor, so far as this matter is concerned, that we should live within the limits of the law, which has, to a certain extent—not created us here, I agree—but limited the power of our expenditure, and that we should go on and order, as we necessarily must, under the contract made by the Comptroller, that there shall be a certain amount published of our debates in a certain form, and laid upon our tables from day to day, and leave to these local papers of the city of Albany the option to print, as a part of the matter for the general benefit of their patrons, each and every day these proceedings, which we thus give to them without charge.

Mr. MURPHY—This question is presented to the Convention in two lights; first, as to the power of the Convention; and second, as to the expediency of printing in the form proposed. I am decidedly in favor of the report of the

committee, for reasons which I will state, in view of these two considerations. Undoubtedly, the Comptroller will not pay for the expenses now proposed, because his warrant for the payment of moneys is the law under which we are acting, and he will pay only so much money as is authorized by this law to be paid by him, as directed by this Convention; but it must be obvious to this Convention, that we are not to be restricted in the performance of our duties, in carrying out these matters which have been entrusted to us by the people under this law. Whether the Comptroller will pay is one question; and whether this Convention may, or should contract beyond, is another question. We have ordered these partitions to be taken down, and have directed the Secretary to have them taken away. It certainly has been attended with some expense which is a proper charge, which must be paid, and which undoubtedly will be paid. We ordered yesterday that clerks should be appointed to certain committees. That expense is not contemplated by the act, and yet, if this Convention deem it necessary and proper that these Committees should have clerks, no one can doubt the propriety of their being paid, or that the Legislature will make provision for their payment. The point is this; where the people have ordered this Convention to assemble to do their duty, they have, also resolved that its members shall have all the power necessary for the proper performance of its duty. We, therefore, come back to the consideration of the second point—Is this necessary? Is this proper? Is it required for the convenience of this Convention, and for the performance of its duties? The point has not been presented in my view upon the ground upon which it has struck my mind. It is not whether these debates will, by means of these local newspapers, go to the people at large, or not. For I suppose that, by any newspaper publication and distribution, these debates will not reach the people in time to react in any manner upon the action of this Convention. It is not, therefore, for that purpose that I support this resolution, and deem this necessary for our own convenience. It is impossible, from the way we are seated in this Convention, as well as for other reasons, to know exactly all that may be said in the course of debate; some of our discussions here will be continued for days, and on important questions, perhaps for weeks, and it is proper for the true consideration of the questions that we should know all that is said, and that all points should be met, we should have before us the words as they may fall from the members. I wish to know and to be able to read for myself when I shall not have heard the remarks of the member or delegate, what he has said, and by means of this simultaneous publication in the newspapers I shall know what I should not be able to find out otherwise. The publication of these debates in this form, I regard also as important in another point of view. I think if we have the full debates published at the time, members will be more careful in what they say, and, it will have a wholesome influence upon the tone and character of our debates. If they are not published in this form, and we merely have a summary in the news-

papers of what members may say, we shall leave it, in the first place, for correspondents to caricature what may be said; and in the second place, we shall often have the precise point of the speaker, and perhaps, his statements, misrepresented. But it is said that the Comptroller has provided that these debates shall be published in pamphlet form, which will obviate the necessity of the proposed publication. I apprehend this publication in pamphlet form will not be on our desks as promptly as the newspapers, because with the newspapers it is a very necessity, to appear by a certain hour; so that they will be in every member's hands at the breakfast table, and he will know what has been said the day before, in consequence of the rule which prevails with regard to the publication of newspapers. Not so with these documents, which may come to us one, two, three, four or five days after the debate has taken place. Another point of view is, with regard to the expense. If it will be less expensive to print it in pamphlet form, I think we may obviate the objection which arises from the consideration that we should have this in pamphlet form, as well as in this newspaper form, by making some arrangement with the printers to have the matter in their columns transferred to pamphlet form at a much less rate than has been contracted for by the Comptroller. This is not an unusual thing; the Congress of the United States publishes its debates at its own expense in the Congressional Globe and I do not know why we may not do the same. In all the views of this question, therefore, I shall sustain this report.

Mr. BARKER—I move to amend the resolution by striking out all after "resolved," and inserting the following:

"That the Comptroller and Secretary of State be requested to contract with two daily papers published in the city of Albany, to publish daily reports of the proceedings and debates of this Convention, as furnished by the stenographer, providing the same can be contracted for at just and reasonable rates, and not exceeding in the entire amount twelve thousand dollars."

The objection to adopting the resolution, as reported by the committee, seems to be based upon the idea that this Convention has not the power to make this recommendation, or incur this debt. I concur somewhat in that sentiment, but it seems to me that, by the provision of the 8th section of the act, the power is conferred upon the Comptroller and Secretary of State, and that they are vested with the discretion to decide what printing is necessary for the use of this body, and, with that view, I have offered this amendment. I will read the 8th section, as my argument seems to be suggested by that.

"Sec. 8. The Comptroller and Secretary of State are hereby authorized and required to receive proposals and make contract, for all the printing necessary for the said Convention, under the provisions of this act, and all such printing shall be done under that contract. Such proposals shall be called for on public notice by advertisement as they shall determine."

It seems to me it was the intention of the Legislature that these two State officers should decide what printing is necessary, and if this body requests them to make a contract of this character, they will concur in the suggestion, and we shall

thereby relieve ourselves of the delicate question which some gentlemen have raised.

**Mr. A. J. PARKER**—Mr. President, I should prefer the resolution as reported by the committee, to the substitute offered by the gentleman from Chautauqua [Mr. Barker], though I should be most willing to vote for it in that form, if the other cannot be adopted. I concur entirely in what has been said by the gentleman from Kings [Mr. Murphy], in regard to the power of this Convention to incur such expense as is necessary for the performance of our duties. Certain it is we cannot be trammelled by any legislative action. Of course we must all agree with what he has said in regard to the convenience, and that these reports will be of use in understanding from day to day the course of debate, and from the light it will give us as to the votes we are to cast. And I beg leave to add another consideration, which strikes me as important, and which I think should induce us to vote for this resolution, and that is this: This Constitution is to be submitted to the people at the November election. They are then to pass upon it, and they should have, before that time, not only the proposed Constitution itself, but they should be informed with regard to the whole course of debate that has taken place in the discussions of the Convention; and I know of no form in which this information will be so likely to be given to the people as in the mode prescribed, if these debates are published verbatim, as proposed, in the two leading papers of this city, each representing one of the great political parties of the State, and which if thus spread throughout the entire State will be brought within the reach of every intelligent voter, who may wish to be informed of the reasons that have influenced delegates in the votes they have given. I believe it is the best mode of informing the public mind and qualifying it to judge of the wisdom of the conclusions to which we may arrive. The expense has been spoken of, but it seems to me, that is trifling, compared with the importance of having this whole matter understood by the people, and of enabling them to judge of the propriety of these clauses of the Constitution, with all the light we have had in considering them and in voting upon them. I shall, therefore, Mr. President, very cheerfully support this proposition as it now stands, without regard to the substitute of the gentleman from Chautauqua [Mr. Barker] because, by that amendment, some little time will elapse in order to advertise for proposals, and it is high time that these debates should be laid on our tables daily.

**Mr. ALVORD**—I wish the gentlemen who urge the adoption of the resolution reported by the Committee, to answer me this one simple question: The *Albany Argus* and the *Albany Journal* are taken in the county of Onondaga to the extent, probably, of seventy-five copies of both—I possibly may have put it too high, but I have not probably got it very much too low. Now, what is the result in my county? This proposed publication is for the purpose of giving information to the people from day to day in regard to the debates of this Convention. The result is simply this, with regard to the seventy-five who take it—and many

of them take it merely because of their desire to ascertain the state of the market in this locality, and without any regard to what may be otherwise contained in the paper,—that to those men is confined the entire knowledge of this whole matter, or else our local papers, taking these papers in exchange, are compelled, at their own expense, to go on and set up the type, taking the debates from these papers, and put them into their local journals, which are distributed broadcast all over the country, in order that they may reach the entire mass of the people. Why should we go on and pass a resolution that the papers here shall be paid six thousand dollars apiece for publishing these reports from the hand of the stenographer? Why not also say to each and every one of the local papers of the counties, "if you will go on in addition thereto and publish them in your papers you shall be paid five or six thousand dollars apiece!" If it is for the purpose of giving information to the people, it seems to me this is more appropriate and more proper than the original resolution. Then Sir, there is another thing; the gentleman from Chautauqua [Mr. Barker,] has offered an amendment here. I think he misunderstands the purport and intent, and the absolute meaning of this eighth section. It is this—that the Comptroller and Secretary of State are not the proper persons to judge of what is the necessary printing of the Convention, but the Convention having determined that matter, they have advertised for proposals and entered into a contract with parties for the performance of that duty for the Convention. It also strikes me, and in fact I think I have been so informed, that the Comptroller and Secretary of State have already made the contract authorized and required by the eighth section of the law giving form and complexion to this Convention, and I will leave it to the lawyers to determine this simple proposition which I make to them. If they have made this contract, which says in terms that they shall do all the printing necessary for the Convention, will it not be that these contractors, on their part, have got a vested right; and if you undertake to take this printing out of their power, under that contract, and put it into these papers, will they not have an equitable right, at least, if not a legal one—because they cannot sue a sovereign State—to demand that all the profits arising out of this printing should result to them, and should be paid to them, under the contract they have made with the Comptroller and Secretary of State. Therefore, I am of the opinion, that we should not proceed further in this direction, until we shall have had before us, from the Comptroller and Secretary of State, a copy of that contract or agreement, which they have made with the printers, to do the necessary printing for this Convention, to see whether it does not, in the broad terms of the section itself, compel those contractors to hold themselves in readiness to perform all the printing we shall order. If it does sir, it strikes me that there can be no question whatever, but what these printers will have an equitable lien upon all the profits which may arise to these papers that have this outside printing.

**Mr. BARKER**—I desire to ask the gentleman



from Onondaga [Mr. Alvord] a question. Suppose this Convention directs the printing of a report, then I suppose the Comptroller and Secretary of State are to provide for that printing; is that your understanding of it?

Mr. ALVORD—My understanding is, that the Comptroller and Secretary of State have made a contract of this kind—a contract with A. B. that he will hold himself in readiness to do and perform all the necessary printing. The contract requires the printing of all matters that shall be ordered by the Convention, without any reference to reports, or anything else; and they shall have the privilege of doing the work.

Mr. BARKER—That, I apprehend, does not take from them the power to make a further contract for printing, in the mode and manner which this Convention will suggest, and I think it is the duty of these public officers to follow the suggestions of this Convention in that direction. It can be easily arrived at by the provisions of the same section, by advertising for proposals, which can be done in a few days' notice, and the next section has provided for the fund out of which it may be paid.

Mr. CORBETT—I think that section 8 contemplates an entire contract, how the work of printing shall be done, and I think gentlemen are mistaken when they assume that the committee propose to contract with the two papers named in the report. A recommendation is not a contract. These two papers come here and state that they will publish the debates of this Convention for the sum named, and that they will take the risk of getting their pay from the Legislature. There is no contract whatever; they simply enter into an arrangement, we, on our part, agreeing to recommend to the Legislature to pay this sum. That is all there is of it. I do not see that there is any violation of the eighth section in the recommendation of the committee. Yesterday the gentleman from Ontario [Mr. McDonald] said that the papers named in the resolution had not a very extensive circulation in his locality, but I trust in the matter of circulation of newspapers, and perhaps in the matter of reading them, the village which the gentleman has the honor to represent will not be taken as an index to other portions of the State. My colleague from Onondaga [Mr. Alvord] states that seventy-five copies of the *Journal* are taken in Syracuse, and probably as many of the *Argus*.

Mr. ALVORD—I said of both.

Mr. CORBETT—I think the gentleman is mistaken. I think that at least fifty copies of each paper are taken at Syracuse, and a copy of each is in all our public libraries, and each paper has a large number of subscribers in Syracuse, beside all the newspapers published in Syracuse receive the *Argus* and *Journal* in exchange, and in that way the entire county receives the benefit of the news. With regard to pamphlets—they are mainly for the use of the Convention. We have eight hundred copies ordered for our own use, and supposing we mail six hundred to our constituents, there is an expense of \$12 a day for postage, to say nothing of the manual labor of preparing these documents for mailing. If the character of the discussions here is at all proportionate to the

interest and the importance of the subjects discussed, the people ought to know something about them. It is barely possible that the interest in the doings of the Convention will not be permanent, and if so, I wish the people to have these debates while the interest is at its height. Beside, sir, we shall pay the Stenographer a large sum of money for his services here, and we do not want this large pile of manuscript lying useless for one hundred days, or as long as the Convention may remain in session. We want the public to know something of what is going on here, and we cannot give the requisite information by the small number of eight hundred pamphlets. I am therefore decidedly in favor of the report of the Committee.

Mr. GOULD—With a view of enabling members of the Convention to ascertain precisely the terms of the contract, which has been made by the Comptroller and the Secretary of State, I move that this subject be laid upon the table.

The question was put on the motion of Mr. Gould it was declared to be lost.

Mr. FERRY—Since this Committee was authorized to make this report, the Convention have appointed a Committee on Contingent Expenses, and it seems to me that this is a subject which is eminently appropriate to be referred to that Committee, and I make a motion that this whole matter be referred to the Committee on Contingent Expenses.

Mr. E. BROOKS—I hope, Mr. President, that motion will not prevail—

The PRESIDENT—The Chair would inform the gentleman that a motion to refer is not debatable.

Mr. E. BROOKS—May not a reason be given for not adopting the motion, without trespassing on the rules of the Convention?

The PRESIDENT—It may, if it does not involve the merits of the question.

Mr. E. BROOKS—I will not go into the merits of the question at all; I simply wish to say to the Convention, we must meet this question now, or hereafter. We have had a long debate upon it; we understand it now, and we had better dispose of it at once.

The question was then put on the motion of Mr. Ferry, and it was declared to be lost.

Mr. NELSON—It has been suggested, that the Convention must meet this question as it presents itself. It occurred to my mind, not as an editor or professional man, that it would be well to determine first, before voting upon this question, whether this publication shall be made. It is suggested by some gentleman, that it ought to be made for the convenience of the members of the Convention. It is also suggested, that it is well for the publication to be made for the benefit and advantage of the people who may read it. Looking at it in this two-fold view, so to speak, which will then be most convenient for members of the Convention? It must be apparent I think, that the most convenient manner or mode of its being placed in the hands of the members of the Convention, is in the public newspaper, which reaches us, as has been suggested, every morning at the breakfast table; at all events it will reach every member, before he comes into this Convention and he will be enabled to review everything which has



been said on the previous day in the Convention. But to my mind the most important aspect of this question is that which affects the public. We know, in looking back over the votes which have been cast in reference to this Convention, that the public have taken really but very little interest in it. The question whether a body of men should be elected to alter, or to propose alterations in the fundamental law of the State, called out, in some of the districts, not a single vote of one of the parties. In the counties of Orange and Sullivan. I am told that but one ticket was voted for. So throughout the great body of the State, the vote, which was perhaps as important as any which has been cast within the last twenty years, was so small that it has even suggested the inquiry whether this Convention is legally and properly here. Although that question has not been passed upon, yet, adopting the old rule, which is pretty well established, that bodies never lose any of their jurisdiction by their own consent, I will assume that the Convention is properly here. And I think we may assume another thing; that it is the desire and opinion of the gentlemen composing this Convention, that their action will do some good, and be of some advantage to the future prospects and history of the State; and that it will be important in the future to the people of the State who adopt the action of this Convention. Knowing, as we do, the little interest the public have taken in this question, would it not be well, when you send to the people who live in the rural districts and the cities, the result of that action, that you send also the words, reasons and arguments which have induced the action you may take, and led to the results at which you may arrive. There is one other question—that is the question of expense. I take it for granted if it is well to publish these debates, those having charge of such publication will so order and direct the matter that it will be in the cheapest form, and at the same time so as to satisfy the wants of the people. It is not alleged or claimed, if I correctly understood the report of the Committee, that there is any power in the Convention to create a legal obligation for the payment, but it is proposed by the gentlemen at the head of these papers, that they take upon themselves the risk of publishing these reports, and submit it to a future Legislature to pass upon, or to ratify the action of the Convention and pay the bill. It is suggested that but few of the people of the different counties will receive the Albany papers, and it is stated that in the county of Onondaga there are but seventy-five subscribers to these papers. If that is so, and these seventy-five get them, then I would like to ask the gentleman from Onondaga [Mr. Alvord] if he thinks that by any means the pamphlets would reach any more than the same number of persons? The people who feel an interest in this Convention, editors, publishers, and the public newspapers, will know, or have a right to think, that the local papers where the Convention meets, will give accurately the occurrences and debates of this Convention. If that is so, and seventy-five copies go to the county of Onondaga, reaching all the newspaper offices of the county; and five, six, or ten go the county of Dutchess, and so on throughout the State, what-

ever is of interest or importance, the local papers will publish and send forth, so that every single voter in the State will understand exactly what the Convention has done and the reasons and arguments by which the Convention was induced to do it.

Mr. CLINTON—I have listened to this argument with great interest. I am opposed to the passage of this resolution in any form; but if it is to be passed in substance in any form, I prefer that the course pointed out by the gentleman from Chautauqua [Mr. Barker] be pursued. It strikes me that is the legal and proper form. As to the merits of the question, I am not convinced that the publication of these debates in these two newspapers will increase the amount of information, and result to the benefit of the people of the State, and will voluntarily and of necessity and with a view to their own circulation and respectability, be diffused by the papers throughout the State. Mr. President, there is another objection, to this matter in my mind; as I understand the report of the Committee, the Secretary of State and the Comptroller in the determination of what is necessary in the way of printing, as provided by the law under which we have assembled, have made a contract, and they have provided in that contract for the printing of the debates. The Committee state that under this provision, a contract was made with Weed, Parsons & Co., dated, May 16th, 1867, for the printing of documents, for such a compensation and at such a rate, for the printing of the journal at such a rate and for the printing of the debates at such a rate and in such a form. If we are to have these debates printed and laid upon our tables in this pamphlet form, it strikes me, with all deference to the gentlemen who take the opposite view, that for our use and our purposes, it will be the most convenient form. Then the resolution submitted by the committee requires a thing which under no circumstances could I vote for; but not being in favor of the resolution itself I shall not propose any amendment. I wish to avoid all appearance of evil! I do not wish any imputation, such as we have heard with reference to legislative bodies, to be thrown upon this Convention. We all take our own newspapers; we all take these newspapers every morning and every evening; there are probably very few gentlemen here who do not purchase them. The law also provides that we shall have these debates in this form. This resolution provides, that each of these papers thus singled out, is to receive \$6,000 apiece for printing in full these debates; and shall furnish to each of us, without compensation, two copies of their respective papers. That I cannot vote for.

Mr. M. I. TOWNSEND—The consideration which will control my action on this subject, refers especially to the question of my own instruction. The people of the State have sent us here for the purpose of taking such action as in the light which we should become possessed of, we shall believe will be for the well-being of the State. And I conceive it my duty to obtain here the best information under the circumstances I am able to possess as to the mode in which I shall discharge my duties. I believe that the debates of the Con-

vention are among the best modes of instruction that the minds of the members can resort to for the guidance of themselves in the votes which they shall give. Now there is nothing to be done without some expense. Members sit here and listen to debate, and every minute of debate costs the State money, and yet no gentleman will believe that we are doing a wrong to the State in putting the State to the expense of the Convention listening to a reasonable and well intended discussion of matters that come before it. If then it be right to put the State to the expense of listening, and have the members listen to protracted discussions which must necessarily ensue here, I take it, it is not more wrong to have these discussions put in a shape by which the people and members will be instructed as to what has been put forward in this body. It is because I believe that these debates are necessary to our instruction, that I shall vote for the adoption of the report.

Mr. SPENCER—With due deference to the opinions which has been expressed here as to who is to determine upon the necessity of any printing that may be required, I desire to submit whether these gentlemen who have expressed the opinion that it is to be determined by the Comptroller and the Secretary of State are not mistaken. The language of the act relating to this subject is this: "The Comptroller and the Secretary of State are hereby authorized and required to receive propositions and make contracts for all the printing necessary for the State Convention." This act does not provide that they shall determine upon the necessity, nor does it leave that inference. If I correctly understand the language of that act, the inference is left that the Convention itself shall determine upon what printing is necessary for its purposes. And in accordance with that understanding, the Comptroller and the Secretary of State, as I understand, have made a contract in which they have provided not only for a certain class of printing, but for every class of printing that could be possibly required by the Convention — and under one of the clauses of that contract, as I understand it, the Convention is authorized to require the printing of these debates, and not only the printing of these debates, but printing in the form which is suggested under the resolution reported by the committee. I make these remarks merely by way of suggestion, in order that gentlemen who have not carefully considered this subject, may determine for themselves by whom this necessity is to be determined, and without indicating upon my part whether I will favor this resolution in either form proposed or not.

Mr. CARPENTER—I do not wish to add one word to the discussion that has been had upon this question, but I rise simply to offer an amendment.

The SECRETARY proceeded to read the amendment as follows:

Strike out all after the word "Resolved," and insert the following:

"That the Stenographer of this Convention be, and he is hereby directed to furnish to the Albany *Evening Journal* and Albany *Argus*, within twenty-four hours, if possible, after the debates and pro-

ceedings of each day, a legible manuscript report of such debates and proceedings, if said papers should desire to publish the same."

Mr. FOWLER—I offer the following amendment—

The PRESIDENT—A further amendment is not now in order, there being two amendments already pending.

Mr. McDONALD—I do not rise to argue this question, but simply to explain and state some facts. Since the resolution offered by the gentleman from Columbia [Mr. Gould], to lay the resolution on the table in order to procure copies of the contracts, has been voted down, it would be proper to state what the contract contains, for I have seen it. The contract as set forth by the report of the committee provides for three kinds of specified printing. Then there is a provision for miscellaneous printing which the contract provides shall be paid for at the rates current at the date of the contract in the city of Albany. Then the contract provides in these words in reference to the debates (and I read from a literal transcript from the contract): "For debates, each 800 copies of eight pages, each page to contain not less than 3,000 ems of brevier and nonpareil type, to include all charges, \$5.88, and for each additional one hundred copies, of eight pages, one dollar." Then there is a provision for documents and then another provision for the Journal. I hold in my hand a calculation, made by Mr. Parsons, one of the contractors, in regard to the debates, which is as follows: 800 copies, of 1,000 pages, regular order, \$735 each; additional 1,000 copies, of 1,000 pages, \$125. That is what the contract contains. I now wish to explain a little in regard to what I read in the *Argus* of this morning. It alleges that I offered a proposition to have printed a large number of copies of the debates. I offered a resolution which appears on the files and which does not provide for exceeding 600 copies of the debates. The article alleges that the pamphlets are to contain sixteen pages each. There is no such provision in the resolution. The resolution provides only for so many copies under the contract, and the contract fixes a price for eight pages and not sixteen pages. As I see a representative of the *Argus* present, [Mr. Cassidy,] I will state what I understand the facts to be, and if I am not right he can correct me. I understand the facts to be that that contract for printing the debates was let at the low prices at which it was let, because they were intended to be published in the newspaper any way, and being published there, the type could be transferred for publication in the pamphlet, and in that way the contractors could get their pay.

Mr. CASSIDY—There was no such understanding as the gentleman has stated.

Mr. McDONALD—That was the reason stated by the *Journal* to the Comptroller, not the *Argus*.

Mr. FRANCIS—I will say in reference to the *Evening Journal*, that the proprietors of that paper have stated distinctly, that under no circumstances will they publish these debates, unless they receive pay for the same, as is now proposed, and they were quite anxious, that there should be an early report, so as to settle that question.

Mr. McDONALD—I only state what I

understood from the Comptroller, that such was stated to him, that the reason of their taking the contract at so low a rate, was that they intended to set the debates up for the paper and they could then transfer the type, to publish them in pamphlet form. I will further state that the parties who made the award, were a day in determining which was the lowest contract. In getting at the award they had to calculate upon what the Convention might order. If this Convention ordered a certain number of the debates, it would be the lowest contract. If it did not, it would not be, and so they had to calculate upon the probabilities. I understand this as another fact; that each day's proceedings set up in this way are being stereotyped just as they appear in the paper, without amendment or change, to be printed in the pamphlet. I see before me a statement in the *Argus* that the proceedings and debates of the Constitutional Convention of 1846, were published by both papers. I would ask for information, as I understand the fact to be, that at that time both papers not only published the debates without cost, but furnished their own reporters and paid the entire expense throughout, neither getting one cent from the Convention, nor asking for it. And, although these two papers do not intend to publish the entire debates, they do intend to publish the greater portion of them—at least, so I understand. Now with regard to another matter. There is a clause which gentlemen have forgotten to read. After providing that they shall contract all printing necessary, the law says, "that all such printing shall be done under such contract." If this printing is not necessary it ought not to be done. If it is necessary it should be done under the contract. The contract is let. It is signed by the officers of the State, and I cannot see why the contracting parties on the other side are not at liberty to claim that they are freed from the contract if they see fit to do so. I may say further that I have inquired of several editors and they tell me that they would much prefer the pamphlet edition. I refer to editors in the country. They say that if they have the pamphlet edition they can extract what they desire to publish and then lay the pamphlet on the shelf and if any opposing editor should criticise them they have the pamphlet by them for further reference. The debates are laid out before them and they are ready at any time to be used in the discussion of the subjects involved. But in the case of a daily paper, the debates would be looked over—whatever was found immediately requisite would be cut out and then the paper would be thrown away. These are the considerations which weigh with the men with whom I have advised. But I have no doubt if the two newspapers mentioned choose to publish the debates in their daily issues the people will subscribe for the papers as they did in 1846, and the publishers will be fully recompensed as they were when they published the debates of the Convention of 1846. The gentleman from Kings [Mr. Murphy] considers that this Convention has the power to order this printing to be done. Has this Convention any power whatever? Does the gentleman propose to insert in the Constitution a clause providing that the Albany

*Argus* and the *Albany Evening Journal* shall be paid for this printing, and that the question whether they shall be paid shall be submitted to the people? Is not every act of this Convention utterly void unless passed upon by the people? All it amounts to is this, that we, a body called to form a new Constitution and nothing else, take it into our own heads to issue an unauthorized certificate of indebtedness to the next Legislature to pay, and before we get through we may put a clause into the Constitution forbidding them to honor it or directing them to dishonor it. I do not propose to be put in that position at all. We have met simply to propose rules to restrain other bodies—would it not be well to set a good example and be restrained ourselves?—At the proper time I wish to offer a substitute.

Mr. MURPHY—I did not propose, I may say in reply to the gentleman from Ontario [Mr. McDonald] to put into the Constitution a provision that this expense should be paid under authority of an article of the Constitution, or that a proposition in regard to it shall be submitted to the people. The proposition which I presented to the Convention is simply this: that it is not in the power of the Legislature to limit the powers of this body in respect to the performance of its duty. What the Legislature has done has been to pass an enabling act by which the expenses of the Convention can be paid. When they gave to this body the power to form a Constitution or to amend it, they gave to it all the powers necessary for the performance of that duty. And although a legal claim might not be raised against the State, yet certainly an equitable claim would be raised in this case which the Legislature would sanction and pay. It is ridiculous to suppose that the Legislature would say that this Convention must travel in just such a route. Does anybody suppose that they meant that we should not have all the facilities which may be necessary for the purpose of correctly doing our work? Not at all. We who are entrusted with such great power as the forming of a constitution, certainly may be entrusted with the minor power to determine what is convenient and necessary for the performance of our duty. That is the principle which I meant to assert, and which, I think, is incontrovertible. I put this simply upon the ground of its being for the convenience of the Convention. I will state to the gentleman a simple fact called forth by his remark. He states that the debates were published in 1846 by two of the newspapers in this city. They were. There was the *Atlas* report and the *Argus* report—reports by two papers on the Democratic side of the House, if I may be permitted to allude to a political designation here. There was a rivalry existing between those papers premonitory to the split which broke up the party two years afterwards. They were anxious to get the start, and I believe that both of them were made nearly bankrupt by the operation. And here is another fact that I desire to call the attention of the gentleman to, that these reports did not contain a faithful account of what transpired in that body. Look into those debates, and you will not find a single syllable in regard to the question of the



calling of future conventions, and yet that subject was discussed in that body. There was a debate upon the subject. I recollect it, and other gentlemen who are here, and who were members of that Convention, remember it also. There was quite a discussion as to the language of the provision of the Constitution providing for the calling of future conventions. If we had had that reported, there would have been some light upon and some signification as to what was intended by that provision. You find nothing there. Then too, those reports are full of errors—if I may be allowed such a paradox—full of omissions. Probably if the debates had been fully reported, they would have extended to double the size in which they appear in the published volume. I want to have these debates fully reported if possible, and laid upon our desk the day after they shall have taken place, in order to have any error corrected which may have crept into the report of the Stenographer, and also that I may know what may have been said by gentlemen who entertain different views from myself, and whom I may desire to answer or to acquiesce with if I deem their views just and right. I say it is impossible that every member should know what has taken place in some of the debates. We are doing this for our own convenience and enlightenment, and instruction, and in that view, it is for the benefit of the State at large to give us full and prompt reports of the debates. For what is the benefit of having discussion if our ears are not open to hear them, and we cannot know what is said. I certainly hope the Convention will adopt the report.

Mr. GREELEY—I shall support the amendment last proposed by the gentleman from Dutchess [Mr. Carpenter] on this floor. I think that the proposition is liberal towards the newspapers and is fair towards the people of the State. It has been admitted by the gentleman from Kings [Mr. Murphy], who was a member of the former Convention, that no paper was paid by that Convention for the printing of its debates. And I may say that no former Convention has paid money either for the reporting of its debates or the printing of them, or its proceedings, in any newspaper. We meet here and have provided for skillful, able and full reports of our debates. We have provided for that at the expense of the people of the State of New York. Now, are these debates worth printing? They will be printed in our documents, at any rate, and the final report of our debates will be published for record and for reference. Shall they also be published for the present information of the Convention? I think they ought to be; and I think that unless we are to be exceedingly dull and trivial this summer, if we provide that the debates shall be skillfully and accurately reported, the leading journals of Albany can very well afford to take the reports which have been provided at a very considerable expense by the people of the State of New York, and publish the debates in their succeeding issues without further cost to the people. Hitherto they have done it at their own cost, and now the entire cost of reporting is saved to them. The other amendment offered by the gentleman from Chautauqua [Mr. Barker], I am

opposed to, because I am opposed to making a payment in any form for the publication of the debates. I do not want to advertise to the people of this State that our debates are to be so poor and worthless that the journals of Albany cannot afford to print them. If they are to be of that character that the printer must be paid to print them, the people will naturally conclude that they cannot afford to read them unless they are paid also. [Laughter.] If they are too poor to be printed in journals which circulate among the people, unless the printing of them is paid for, the legitimate inference will be that the readers should also be paid for being informed of what we have done. The gentleman has spoken about the circulation of those journals. I live in a county more populous than the county of Onondaga, which the gentleman [Mr. Alvord] represents. We have there 120,000 inhabitants, and yet there is probably not fifty copies of the *Albany Argus* and *Journal* taken in the county. It seems to me that people among whom I live should not be taxed as largely as they will be if the report of this Committee is adopted, to enlighten people in other parts of the State, and that a more fair and equal distribution should be made. If twenty copies of the debates are given to each delegate, I would try to have mine sent to people I represent to the best advantage for giving a fair understanding of what we are doing. But if the circulation is to be made through the Albany journals, and they are to depend upon them to enlighten the people, I do not believe that 500 copies will find their way below the Highlands, although below that point is more than one-third of the population of the State. I think that we should deal generously with the publishers of these papers, and in my view, we do so, if we give them the debates which we have had taken at the expense of the people without cost. For that reason I shall support the amendment of the gentleman from Dutchess [Mr. Carpenter].

Mr. FRANCIS—As a practical matter, it may be well to state the fact that unless this publication is provided for as proposed, there will be no newspaper publication of these verbatim reports of the proceedings that are supplied by the Stenographer. That point is settled. Then with reference to the question raised by the gentleman from Westchester [Mr. Greeley], that we are very generous to offer a verbatim report of these proceedings, free of cost, to the newspapers for publication, and that if what we say is worthy of being printed at all, the newspaper publishers will be glad to receive and publish the reports. When the Constitutional Convention of 1846 was held, the *Atlas* and the *Argus*, each as a matter of individual enterprise, did publish the reports of the Convention in *extenso*, as has been stated, but their publication involved a loss of many thousand dollars, and under the pressure of that experience it is not very probable that private enterprise will undertake the publication of our proceedings now. Now, as suggested by Gentlemen, if we want these proceedings published in the newspapers, then we must provide for the payment for doing the work, and the terms proposed I considered exceedingly liberal indeed,



they being one-half the legal rates of publication. It is for this Convention to decide whether they prefer a publication in pamphlet form, or whether the report shall go into two leading newspapers of this city which go over the entire State, and are received by newspaper editors in every county, and through which the people may be apprised of what we are doing, as our work progresses. This is the practical question for us to decide.

Mr. TILDEN—I do not desire to take up any considerable time of the Convention in respect to this subject matter, but I confess it seems to me desirable that we should attain a somewhat clearer view on one or two questions which have been discussed. Now, in the first place, I think it is quite apparent that the contract entered into by the public officers, although I have not had the opportunity to read that contract, relates merely to what is known as job printing; whereas, the object contemplated by the resolution now pending relates rather more to the publication than to the printing of the proceedings of this Convention. Sir, there are two objects to be attained by the publication proposed. The one, and the most important and primary object is the convenience of the members of this body. Now, it will happen in the course of our proceedings, when the Committees get into full operation, that members will desire, in their attendance upon these committees, to withdraw temporarily from the House without its formal assent. It will very often happen, also, that we shall be obliged to ask permission of the House, for Committees to sit during the sessions. How is it going to be possible for us to keep up with the current of debate, unless we can have, daily presented to us, a complete, exact and authentic record of the debates and proceedings? I do not see any other mode in which this can be accomplished, and I think that is an object of very grave importance to the proceedings of this body. Sir, it might shorten debate very much if gentlemen could know precisely the position occupied by those who differ in opinion from them; and how far the subject has been discussed when they have not had the opportunity to be present. I would not give much for these reports, if they are to be delayed two, or three or four days, as is usually the case where the attempt is made to submit them in book form. I do not think they would be of much value. I do not know as I would vote for any of the resolutions pending unless there was attached to them the condition which I understand is attached, that we should have daily the reports proposed to be given. I think, that if in the *Evening Journal*, so far as practicable, and in the *Argus* of the next day certainly, the entire report of the proceedings of the day can be had, it would greatly facilitate the proceedings of this body. I am in favor, therefore, of that system, and I am in favor of it, without any sort of consideration of generosity to either of these journals in the city of Albany. It is not a case where I should feel at liberty to exercise any generosity. But this is necessary, in my best judgment for the convenience and purposes of this body. And, sir, it is not very costly. The cost is perhaps, not more than five per cent of the amount authorized to be appropriated for

the purposes of this Convention, and I shall not hesitate to apply that amount to an object which I deem among the most beneficial to which we can appropriate any of the funds placed at our command. Sir, a second and subordinate object of the proposed publication is, to inform the people of our proceedings and discussions preparatory to their vote upon the Constitution which we shall frame, in the fall. In respect to that I will simply say that there is a convenience in taking the existing established journals for circulation. If I want to go to Buffalo, I will not wait to build a new railroad to get there, but I will take one that already exists. These journals are established concerns. They have their affiliations everywhere; and though their circulation is not very large among my own constituents compared to our own journals, either in the State or in the country at large, still through this channel we reach all the other journals of the State and country. If I do not prefer to publish these debates in the New York city papers, it is simply because the New York city papers are not printed here, and because we do not sit in the city of New York. We must take the Albany journals because the Convention sits in Albany, and because the journals are printed in Albany. There is a convenience and fitness in doing it in this mode—in taking the existing methods to meet our wants. Now, sir, if we should have laid on our desks twenty or thirty copies of our debates published in pamphlet form, these have all to be addressed and put in the post office in order to reach our constituents. Even then they would not be found at the libraries, or found by the other journals, or found at those places where people congregate. They would not, in my judgment, pass through the other journals into general circulation throughout the State, and I should fear that our pamphlet copies, as all my experience in similar cases has shown, would be several days behind the proceedings of this Convention, and thus become practically of little value for the members for whose convenience the publication is intended. And it is, sir, because of my belief that we shall find this money one of the most useful appropriations that we can make of the funds at our disposal, that I shall vote in favor of the original resolution as reported by the Committee.

Mr. COOKE—Mr. President: It seems to me, sir, that there is one principle involved in this discussion that is worthy of being settled now. When the gentleman from Chautauqua [Mr. Barker] sent up his amendment to the resolution reported by the Committee, the argument was started by the gentleman from Onondaga [Mr. Alvord] that this Convention was barred from taking any action in determining what printing should be done for its purposes. I could not understand until the argument had progressed to a considerable extent how it was that the Secretary of State and the Comptroller had entered into a contract with Weed, Parsons & Co., or any other firm, before the assembling of the Convention, for doing certain printing, and that that was to foreclose all action on the part of the Convention in regard to any printing that it might deem necessary and proper. I have always understood that it was the business of a body like

this to determine what record it should make of its own proceedings, and how it should be published. I never supposed that such a body was to be interfered with or controlled by officers who were not connected with it, and particularly under a statute such as we have here. This section 8 provides that the Comptroller and Secretary of State are authorized and required to receive proposals and make a contract for all the printing necessary for the State Convention under the provisions of this statute. Now, the simple question is, how shall it determine what printing shall be the necessary printing for this Convention? I do not apprehend that the Legislature ever intended to invest this power in these two officers; but it evidently means that whatever this Convention deems necessary and proper printing for its purposes, they shall upon the requisition of the Convention enter into a contract for. It is said that the Comptroller and Secretary of State have contracted for all the printing to be done for this Convention. And it is claimed that the contractors under that contract will be entitled to all the profits of any printing which we may hereafter require, and allot to other publishers. It is enough for us to know that we have a right here to determine these questions for ourselves, and we are not to be directed or controlled by the Comptroller and Secretary of State in that particular. It seems to me, sir, that the amendment of the gentleman from Chautauqua [Mr. Barker], presents this question in its true light and takes the true position. This Convention has no right to contract a debt against the State for this printing. This Convention can create no liability. It has no power to give the proprietors of these two journals, a demand that they can enforce against the State, and that the Legislature will be required to respect when the claim is presented to them. The Comptroller and Secretary of State have that power. The Legislature intended to place that power to enter into a valid and binding contract, somewhere, and they have done it by this provision requiring the Comptroller and the Secretary of State, upon the requisition of the Convention, to enter into a contract to do any printing that the Convention may deem necessary. It may be said that there is an appropriation made of only \$250,000 to cover all the expenses of this Convention. Is it proper, if that was the Legislative intent, that the \$250,000 should be sufficient for all purposes, including the printing, for this Convention to go on and pass a resolution, requesting the next Legislature to allow this claim to newspaper proprietors? Is it not better to create a sort of moral, honorable debt against the State for that purpose, than, provided the expenses of this Convention shall extend beyond the \$250,000, to leave that deficiency to be made up in some manner at the discretion of some future Legislature? All this Convention can do toward securing the payments of the *Evening Journal* and *Argus* for that printing will be by its moral influence upon the Legislature. If we adopt the amendment of the gentleman from Chautauqua, [Mr. Barker], whenever the Comptroller and Secretary of State enter into that contract it is binding upon the State, and the

Legislature will have to audit the account. Perhaps this is not the best possible medium of communicating with or reaching the public mind in regard to the proceedings of this Convention. Perhaps these two newspapers will not be capable of sufficiently disseminating the important debates of this Convention. My friend from Dutchess [Mr. Nelson] seems to have fallen into the error of supposing it to be the duty of this Convention to force this information upon the people. I do not exactly like the general tone of the gentleman's remarks. I certainly do not like the logic by which he came to the conclusion that the original resolution must be supported. He says there was so little interest in the election of delegates to this Convention, that, in some localities, the citizens hardly came out to vote, and that in many instances, only one ticket was run in a district. If that is so—if they were so indifferent to the fact of the Convention, it is reasonable to suppose that they will be somewhat indifferent to its proceedings. He ought certainly to devise some way by which he can make these indifferent men read the proceedings of this Convention, so as to be able to take final action upon our proceedings by adopting or rejecting the Constitution we shall frame. I feel, sir, that it is necessary to inform the public in some way or manner of the proceedings of this Convention. The time, according to the predictions of many gentlemen upon this floor, which the people will have to deliberate upon the action of the Convention, will be quite short. There will hardly be time enough for a full and elaborate discussion of all the measures proposed by this Convention. It would be well, in my judgment, if the people could be put in possession of the requisite information upon which finally to determine this question. With a view that this information may be afforded, and promptly afforded, I shall support the amendment of the gentleman from Chautauqua [Mr. Barker.]

Mr. HALE—I rise merely for the purpose of obtaining information in regard to the contract that has been already made. If I understand the facts aright, a contract has already been made by the Comptroller and Secretary of State, with Weed, Parsons & Co., for the printing of these debates for the Convention. The gentleman from Ontario, who spoke yesterday [Mr. McDonald], stated that he had understood from Mr. Parsons that within three days, at the farthest, after these debates are had, the printed report can be laid on our desks, and that usually they can be within one or two days. If the contract was made, as I understand it to have been, before the organization of this Convention, I wish to ask the gentleman from Ontario [Mr. McDonald,] why it is that we now, after seventeen days have elapsed since the organization of the Convention, have not on our files the report of a single days debate.

Mr. McDONALD—If the gentleman from Essex [Mr. Hale] will allow me, I will state that that contract does not provide absolutely for the publication of the debates. It provides the price, if this Convention shall order the publication of the debates, at which they shall be published. This Convention has not made any order on the

subject; and, therefore, the journals of debates has not been placed upon our desks. In regard to the statement of Mr. Parsons, I will state just what I understood from him. I went there to frame a resolution, at his dictation. He said that within three days after the approval of the debates they could get them out and have them placed upon our desks, no matter how long the debates might be.

Mr. HALE—The answer of the gentleman [Mr. McDonald], does explain the question I asked, but I would suggest that it is important that we have a daily report of our proceedings before us, and that a delay of three days, if it can be avoided, ought not to be made—that on the following day, at least, we should have before us the report of what transpired on any given day.

The question was then put on the amendment offered by Mr. Carpenter, and it was declared lost—ayes 42, noes 76.

Mr. FIELD offered the following amendment:

Strike out the words "and that the next Legislature be requested to make the requisite appropriations for payment of the service," and insert as follows: "and that the cost of such publication be paid *pro rata* by the members of this Convention, to be deducted by the Comptroller from their compensation."

Mr. FIELD—I offer the amendment, Mr. President, for the reason that I believe it to be highly important that the members of this Convention should, for their own convenience, have the debates before them as soon as possible, and because I believe there is no authority under the act by which this Convention has assembled, to publish the debates in the manner proposed by the resolution to refer the question of payment to the next Legislature.

Mr. WEED—Mr. President: I would like to ask the gentleman from Orleans [Mr. Field] if he thinks that it would be proper and right to deduct from his pay and the pay of the gentlemen sitting along on the outer lines of the seats on the south side of this Chamber, the amount of the cost of taking down the partitions and finishing up the parts thus defaced, and which was done to suit their convenience?

Mr. FIELD—Mr. President: In regard to that I will state that I have understood from the Comptroller that he has authority of law to make these alterations; but I do not understand that he considers he has the authority of law to pay for the cost of making the newspaper publication of our debates which is here proposed.

Mr. DUGANNE—I think this question of authority ought to be settled here. I believe that the supreme authority is generally supposed to reside in the people; and the people, not the Legislature, have constituted this Convention. The people have ordered us to do certain work in the way in which we shall determine shall be best, and have authorized us to contract such debts or incur such expense as we shall consider necessary in the performance of our duties. I think, Mr. President, that we are going far wide of the mark in assuming that the Legislature has power to restrict this Convention in this regard.—This is a Convention formed by the primary power of the people, and the Legislature has

merely provided certain ways and means to meet the necessary expense of doing the work. It has appropriated \$250,000 to meet that expense. I believe, the amount will be amply sufficient and think we have authority to determine that the increased expense for printing shall be paid out of that sum. And, if we should recommend to the Legislature that the payment of it be provided for, by law, then we should merely be recommending a *specific* appropriation to cover this additional expense not specified in the enabling act. That we have ample authority so to do, there is, I think, no question.

The question was then put on the amendment offered by Mr. Field, and it was declared lost.

Mr. BARKER—As I am convinced that the Convention desires to come to a direct vote upon the report of the Committee, I withdraw the amendment that I offered.

Mr. McDONALD offered the following substitute for the resolution of the Committee:

*Resolved*, That this Convention hereby orders nine hundred copies of the debates to be printed under the contract, and deliver the same to the Sergeant-at-arms. That the Sergeant-at-arms furnish five copies to each member of this Convention, and forward ten copies to the Constitutional Convention of Michigan, and furnish ten copies each to the Governor, Lieutenant-Governor, Comptroller Treasurer and State Librarian—and that the balance be given to the President.

Mr. CORBETT—I would inquire if a substitute is in order.

The PRESIDENT—A substitute is in order if offered by way of amendment.

Mr. CORBETT—I would like to inquire what would be the effect of a motion to lay the substitute on the table—whether it would lay the whole subject on the table.

The PRESIDENT—It would lay the whole subject on the table.

Mr. FOWLER offered the following amendment:

*Resolved*, That the Comptroller and Secretary of State be, and they are hereby authorized to contract for the publication of the daily debates of this Convention, in pamphlet form, and that there be laid upon the desk of each member of the Convention, from day to day, one copy thereof.

Mr. GOULD—It seems to me that this is much the most preferable form in which this subject has come before us. I wish to meet the line of argument that was made by the gentleman from Ulster [Mr. Cooke]. I did not understand the argument of the gentleman from Onondaga [Mr. Alvord], to contend that the Comptroller and Secretary of State had a right to dictate as to what shall be printed by this Convention. I understood him to contend that whatever printing was authorized by this Convention, had already been settled upon as to terms by an absolute contract made by those gentlemen, who were authorized to contract by the law, and that they had made a contract with Weed, Parsons & Co., so that whatever is printed, no matter what it is, by authority of this Convention, is to be printed by them, and no one else, in the very language of the law. Now, sir, if that is so—if the printing that is to be done, under authority of this Con-



vention, is to be done by them, it seems to me that it is illegal, in every degree, that we should order the printing to be done by any one else. It is evidently beyond the power of this Convention. Whilst I am on my feet, I wish to protest against the argument of the gentleman from New York [Mr. Duganne], that there is any inherent sovereignty vested in this Convention. This body is as much a creature of law as any other. Sir, what would be the result if this Convention were a sovereign body? Would they have the right to authorize the transfer of funds in the custody of the Comptroller? Would they have a right to set aside a statute already existing? Would they have a right to change any existing law whatever? Sir, the very statement is sufficient to confute it. Now, sir, I hope that the Convention will adopt the last resolution which was offered. If I understood the reasons which actuated the people of this State in calling this Convention, (and I am sure I understand the reasons of my own constituents,) they were that this Convention might devise ways and means for preventing the unauthorized expenditure of the public moneys by the Legislature. They have been grieved and distressed at the lavish, and I may say, brutal and wasteful squandering of the public funds of which some Legislatures have been guilty. Their object in instituting this Convention was, that we might provide means to prevent this reckless expenditure in the future. Now, sir, if this Convention enters upon an unauthorized and illegal course, it would be like the cat which sat around to catch rats and turned into breeding rats instead of catching them. I hope nothing of this kind will be done, because the law is direct and explicit, and requires the persons who shall contract with the Comptroller to do all the printing of every kind. Then, again, with regard to the absolute necessity which is supposed to exist for the publication of the debates of this Convention in these papers. If, as the gentleman argues, they will refuse to publish our debates as they have done heretofore, I am very certain that the Troy papers will take up the publication. I am sure that journalistic enterprise is not so utterly dead in the cities of Troy and Albany that no one paper will be willing to furnish so important a branch of intelligence to its readers. But, sir, if such is the case, I know that in one city, at least, near by, there are two enterprising papers, *The Hudson Daily Register*, and *The Hudson Daily Star*, which will accommodate this Convention and will publish regularly the reports of the debates of this Convention. Gentlemen, need not be at all alarmed but what the people will know what is going on in this body. There are gentlemen, I know, who speak so low that it is difficult to understand them; but if these gentlemen make statements which are germane to the subjects, enterprise will diffuse information of their utterances; but if their utterances are not germane, then, certainly it is not of the slightest consequence whether they are heard or not. I think there is no doubt that the pamphlet form is absolutely sufficient, and we have no right whatever, under the law, to go any further.

Mr. MURPHY—I wish to make one statement in reference to the proposition that this printing shall be done by contract. In my view there is

no power under this act, in the mode suggested, to make a contract as the State officers have, embracing the contract for printing the debates of this Convention. As I understand this act, which was passed by the Legislature, it was simply for the purpose of enabling the proper printing to be done, to enable us to proceed with our deliberations. The printing of the debates of this Convention is not the printing contemplated by this act. What was meant by printing for the Convention was merely the printing of the reports and other matters which are usually embraced in documents of bodies like this. Printing the debates of the Convention is not "printing for the Convention." Therefore, when the Comptroller undertook to make a contract for printing the debates of the Convention he himself stepped outside of the law in my opinion. We do not get within the law, if that be the object of the amendment, if we should adopt it, and have a contract made with these newspapers. We propose to have these debates printed for our own personal convenience. We can have this convenience subserved in no other way than by having the debates published in the newspapers. To print them in the form proposed and distribute nine hundred copies among members, what does that amount to? According to the statement of one gentleman [Mr. Greeley], there are five hundred copies of the newspapers distributed below on the river. According to the statement of the gentleman from Onondaga [Mr. Alvord], there are seventy-five copies circulated in Onondaga county. Make a computation upon that basis and you will see that there are several thousand copies of these journals which go through the State. They supply the reading demand, if I may so express myself, three or four or five times more than it would be supplied in the form of the pamphlet that is proposed. Now, sir, I regard the whole of this matter as outside of the act. You cannot get it within the act by adopting the amendment last proposed. You do not get within the act, if my views of the construction of the eighth section be correct, that is, that it merely contemplates all printing for the Convention, not including the debates, which are extrinsic and outside.

Mr. DUGANNE—I rise to a question of personal explanation. I was misrepresented by the gentleman from Columbia [Mr. Gould]. I did not say that this Convention was a sovereign body in the unlimited construction of that term. I said that, as emanating from the people, who are the primary source of authority, and sent here for the purpose of doing a specific work, the Convention was sovereign over the methods which it conceived best to accomplish that work, and over the expenses necessary for its performance.

Mr. ALVORD—I rise, not for the purpose of protracting this debate, but to thank my friend from Columbia [Mr. Gould] for his correction of the gentleman from Ulster [Mr. Cooke]. I was absent from the body of the Convention when the gentleman from Ulster made his remarks. The position which I took in that regard was I suppose in hostility to the position taken by the gentleman from Chautauqua [Mr. Barker] who introduced his amendment. My position was that this Convention had the power to order whatever



printing they might see fit, but that the Comptroller and Secretary of State were to contract with the printer to do such printing as we shall choose to order. I wish to answer for a single moment the position taken last by my friend from Kings [Mr. Murphy]. He says his examination of the law shows to him conclusively that the Comptroller has stepped outside of his province by undertaking to contract with these gentlemen, the printers, for printing the debates. I take it, sir, that as a good lawyer, he will take up the whole of that act and look it over from the beginning to the end before he makes judgment in regard to any particular feature in it. That authorizes us to appoint a Stenographer. Now, it must necessarily follow if we appoint a Stenographer to take daily debates from the mouths of the speakers, that we must have some way or other to preserve the results of his labor, and it follows as a matter of necessity, therefore, that the printing of the debates of this Convention is part of the printing which is necessary for this body. I think this explanation clearly and indisputably shows in regard to that fact, that the Comptroller has not stepped beyond his province; that if the Convention conclude these debates should be published, the printer will be bound to publish them under the arrangement made by the contract.

Mr. WEED—I wish to say one word in reference to the last amendment. It has been admitted by every gentleman who has spoken on this question (and the question has been fully discussed by both sides), that it was important that the members of this Convention should have these debates, that they should be able to have them and read them, so that they may more fully understand what is going on in this Convention. Now the amendment proposed is, that the State printer may publish them and place them upon our files in pamphlet form. I simply wish to say this, that you may resolve what you please about the State printer; you may pass resolutions that he place them upon our files within twelve hours or within twenty-four hours, and you will not get them; you will not get them for a week; it will begin as you resolve, but in just about three days that matter will be disposed of, and they will publish them when they get around to them, and you will read them when they publish them, or, in other words, you will never read them at all, because no man will read debates a week or two old. If you want those debates, and if it is necessary for the members of this Convention to have them so that they can fully inform themselves, it seems to me there can be no question but that the only way you can get them is by having them published in some daily paper. They publish their paper daily, and, in their daily issue, you will get this report, otherwise you will not. Some gentlemen may say, as some have already said, that we may resolve that they shall not be paid, unless they are printed according to instructions. They do not care anything about such a resolution. I have seen it tried time and time again; they know that that will all blow over before the time comes for payment, and they will publish them when they can conveniently, and you will never get them on your files in time for the service of the Convention.

Mr. COOKE—I wish to say to the gentleman from Onondaga [Mr. Alvord] that I did not observe that he was absent at the time I alluded to his remarks. I think he has been misinformed in regard to the purport of what I said. I understood the gentleman to argue that because the Comptroller and Secretary of State had contracted for all the printing of this Convention, therefore we should not order this printing. I understood the gentleman to give that as one reason why we should not order this printing. The gentleman disclaims the argument which, as I understood him at the time, was that as a contract was made before the organization of the Convention, it was practically, though perhaps not legally, a bar to our making a contract now, for the publication of the debates.

The question was then put on the amendment of Mr. Fowler and it was declared lost.

Mr. CONGER—I will not detain the Convention with any extended remarks, but I shall keep within the letter and the spirit of this law. That we have a right to publish debates, I suppose is incident to the right and the duty of appointing a Stenographer under the act, and that the Comptroller and Secretary of State were justified in the purview of that provision of this act, in making proposals for the printing of the debates, I suppose cannot be disputed. And these proposals having been once made, and the contract entered into by the parties to the proposal for the printing, I take it that the parties who have got the contract have a right to print the debates of the Convention, and that no other person can exercise that right without their consent. If we look at the contract itself, we find that if we order only 800 copies of the debates under the rule, the parties accepting that contract will receive—providing the debates when published will amount to 1,600 pages—the beggarly sum of \$1,176,—less than \$1,200 for printing, under the rules, 800 copies of a work of 1,600 pages; and I take it we are forced in advance, upon the very consideration of the contract, or at some future day, if not now, to order more than 800 copies of the debates. These parties having the contract, their rights can only be modified with their consent, and I suppose they would give that consent on a reasonable proffer by this Convention, that they should have the right to publish more than the usual number of copies. As the matter stands, both the Convention and the State officers and the printers are in a snarl. If we insist upon the contract, and adhere to the regular number under the rule, we can force the printers to a very great loss under the contract. Moreover, one object of printing the debates will be defeated by the limited number of copies which will be issued, for eight hundred is barely sufficient for the use of the members of the Convention, and the number amounts to nothing in view of the rights of the public, or of those who wish to know what we may say or do. I take it therefore for granted, whether we do it now or at some future day, we must increase the number of copies that we will order of the debates. I suppose, if it were practical, we could induce the State officers and printers so to modify the existing contract, not as to terms, so as to violate the law—

but as to the number of copies that would be printed, and we could effect that result without either violating the law or doing any injustice to any party. It may be too late to submit any proposition, but for the purpose of enabling me to vote on this question intelligently and in accordance with my construction of that law, I offer the following amendment, leaving it to the Convention to designate how many more than the usual number of copies they will order.

The SECRETARY read the amendment as follows:

*Resolved*, That the Comptroller and Secretary of State be requested to receive proposals and make contracts for the printing and publication from day to day, in the *Albany Evening Journal* and *Argus*, of the debates of the Convention, in such wise that the type used in such Journals may be used in book form, so as to furnish to the Convention twice the usual number under the rules. Provided, however, that such contract shall not interfere with any previous arrangement made by such State officers, which the contractors are not willing to modify on the above condition of furnishing double the usual number.

Mr. CONGER—I would like to have it understood that I do not insist upon double the number of copies; the Convention may wish to have ten times the number; and I do not insist upon the manner in which the type is to be set up.—perhaps that better be stricken out—I only want to get before the Convention this idea, that without interfering with any contract or violating any law, we can have this printing done by these papers, on the understanding that they will order ten or twelve times the usual number of copies.

The question was then put upon the amendment of Mr. Conger, and it was declared to be lost.

Mr. BELL—If I understand the resolution right, there seems to be some discrepancy between the amendment offered by the gentleman from Richmond [Mr. E. Brooks] and the original resolution. If I understand the gentleman from Richmond [Mr. E. Brooks] the papers shall receive \$6,000.

Mr. E. BROOKS—That is not necessarily so, but the amendment provides that the compensation shall not exceed \$6,000.

Mr. BELL—I so understand it; then would it not be well to amend it by saying, that each paper shall receive the sum of \$6.50 per column, which in the aggregate shall not exceed the sum of \$6,000.

SEVERAL MEMBERS—That is what it says.

Mr. BELL—I do not understand the resolution to be in those words.

Mr. E. BROOKS—If the gentleman will allow me. The aggregate sum is limited to \$12,000, that being for the entire publication of the debates of this Convention, and then, that it may be equitable, this sum of \$6,000 is apportioned to each of the two journals named.

Mr. BELL—Then the idea is, as I understand it, should the Convention not continue its sessions sufficiently long, so that the sum of \$6.50 a column should not amount to \$6,000 a piece, they will only receive \$6.50 a column for the amount published. If the resolution clearly expresses that, it is all I desire.

The question then recurred on the resolution reported by the committee as amended, and it was adopted by the following vote:

*Ayes*—Messrs. Archer, Armstrong, Axtell, Baker, Barker, Barnard, Barto, Beadle, Bergen, E. Brooks, E. P. Brooks, E. A. Brown, Burrill, Cheritree, Chesebro, Cochran, Colahan, Comstock, Cooke, Corbett, Corning, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ely, Endress, Francis, Garvin, Gerry, Grant, Gross, Hale, Hammond, Hardenburgh, Harris, Hatch, Hitchman, Huntington, Jarvis, Kernan, Ketcham, Kinney, Landon, Law, Livingston, Loew, Masten, Mattice, Merrill, Miller, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, President, Prindle, Reynolds, Robertson, Roy, Rumsey, L. W. Russell, Schell, Schoonmaker, Schumaker, Seaver, Seymour, Smith, Spencer, Tilden, M. I. Townsend, S. Townsend, Van Campen, Verplanck, Wakeman, Weed—80.

*Noes*—Messrs. Alvord, Andrews, Beales, Beckwith, Bell, Bickford, Carpenter, Case, Clark, Clinton, Conger, Eddy, Ferry, Field, Flagler, Folger, Fowler, Frank, Fuller, Goodrich, Gould, Graves, Greeley, Hadley, Hand, Hitchcock, Hutchins, Lapham, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Merwin, Pond, Prosser, Rathbun, Root, A. D. Russell, Silvester, Stratton, Wales, Wickham, Young—47.

Mr. MERRITT offered the following as a substitute for the article in the existing Constitution 'on the militia:'

SECTION 1. A militia force shall be maintained in order to repel invasion, insure protection and security to life and property; to preserve domestic tranquillity, and to aid, when necessary, in the enforcement of the laws; and such force shall at all times be armed, equipped and disciplined, and to that end it shall be maintained at the public expense.

§ 2. It shall be the duty of the Legislature, at its first session after the adoption of this Constitution, to fix by law, the number of the organized militia force of the State.

§ 3. All able-bodied male citizens, between the ages of eighteen and forty-five years, shall be kept constantly enrolled under such regulations as shall be established by law, and the Legislature shall provide for the expense of enrollment and the support of the organized forces.

§ 4. All persons who have been honorably discharged from the army or navy of the United States, shall, in time of peace, be exempt from service in the militia; and all such inhabitants of this State, of any religious denomination whatever, as, from scruples of conscience, may be exempted therefrom, upon such provisions as may be provided by law.

§ 5. The Governor, or the person exercising the functions of Governor, shall be Commander-in-Chief of all the military forces of the State; he shall appoint and commission the chiefs of the several staff departments, aids-de-camp and military secretary, who shall hold office during his pleasure; their commissions to expire with the term for which the Governor shall have been elected.

§ 6. The Governor shall nominate, and with

... shall appoint all major  
... of militia  
... for the term of  
... appointment.

... regimental com-  
... and officers, but such  
... the approval of the

... shall by law provide for  
... of all militia officers

... officers of the militia  
... by the Governor, and to  
... for removal from office  
... the recommendation of  
... the grounds on which such  
... by the Governor of a

... shall otherwise be provided

... the present office and the militia shall  
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... All the enrolled militia, and embraced in  
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The question was then put upon the resolution  
of Mr. HERRICK and it was declared to be adopted.  
Mr. LOEW offered the following resolution:

*Resolved*, That it be referred to the Committee  
on the Legislature etc. to consider and report on  
the expediency of electing members of the Assem-  
bly from the several Assembly districts,  
and for a period of two years instead of one, as  
provided, every elector to vote upon one ticket  
for as many persons as the county in which the  
elector resides is entitled to have to represent  
in the Assembly: and a person shall be elected  
who shall not be a citizen of the United States,  
for two years at the instant of the State, and a  
resident of the county for one year next preceding  
the day of election.

The question was put on the resolution, and it  
was declared to be adopted.

Mr. LOEW also offered the following resolu-  
tion.

*Resolved*, That it be referred to the Committee  
on the Preamble and the Bill of Rights to con-  
sider and report on the expediency of a constitu-  
tional provision, by which a married woman shall,  
in respect to all matters and things necessarily  
arising or growing out of the marriage relation,  
have the same authority, rights, privileges and  
powers that she now has by law, but in respect  
to all other matters and things whatsoever, not  
necessarily arising or growing out of the marriage  
relation, she shall have the same authority, rights,  
privileges and powers, and be subject to the same  
liabilities in all respects, as if she were sole and  
unmarried.

Also on the expediency of giving to persons  
accused of criminal offenses, the right to testify  
and be examined as witnesses in their own be-  
half, the same as parties to civil actions and  
special proceedings now have.

The question was put on the resolution, and  
declared to be adopted.

Mr. SPENCER offered the following resolution:

*Resolved*, That the Secretary of State be re-  
quested to communicate to the Convention a  
statement containing—

1. The number and names of the Indian tribes  
residing or holding lands in this State.

2. The number of Indians belonging to each  
tribe.

3. The location and quantity of lands held by  
each tribe, distinguishing, so far as practicable,  
and as appears by the records of his office, lands  
held in common, and lands held in severalty.

4. Such agricultural and other industrial statis-  
tics as may be conveniently and concisely stated.

Such statement to be prepared from the latest  
census, and other records pertaining to the sub-  
jects referred to.

Which was laid over under the rule.

Mr. GERRY offered the following resolution:

*Resolved*, That it be referred to the Committee  
on the powers and duties of the Legislature to  
consider the propriety of an amendment to the  
Constitution prohibiting the Legislature from pass-  
ing local or special laws in the following cases:

1. Granting to private individuals or corpora-  
tions franchises and the right to their use and  
enjoyment within the corporate limits of cities.

2. Creating or declaring any new divisions of

I had feared that  
there was no answer  
to the proposition. I  
was, however, both ab-  
solutely and positively  
satisfied that the  
proposition was  
not only a very  
valuable one, but  
one which would  
be well worth very

perfect with the in-  
tervention of a double  
any, it would take  
what is given in

the State with reference to the local government of any part thereof.

3. Creating any local commissions, boards, corporations or officers for the government or regulation of any part of the State, or of any of the cities thereof.

4. Providing for the regulation of the exercise of the elective franchise in any part of the State.

5. Regulating the internal police and the administration of justice within the corporate limits of cities; except for the creation of local tribunals of civil jurisdiction therein.

6. Providing for the imposition or collection of annual or other taxes.

Mr. WEED—May I ask what committee that is to be referred to?

Mr. GERRY—I propose to have it sent to the Committee on the Powers and Duties of the Legislature other than as specially referred.

Mr. TILDEN—I desire to move the reference of this resolution to the committee mentioned by the gentleman who offers it. I do it for the purpose of suggesting that a more appropriate disposition of these resolutions would be, that the mover of them should move a reference to the appropriate committee, rather than the adoption of them by the Convention. There is a tendency to some extent, perhaps, to make an expression of opinion on the part of the Convention, if it adopts the various resolutions submitted. I do not apply this criticism to the particular case, but present it in reference to this case for the purpose of enabling the Convention to settle its policy hereafter. I think, in all such cases, the more orderly and parliamentary mode, would be for the mover to move the reference of his resolution to the proper committee.

The PRESIDENT—The Chair would inform the gentleman from New York [Mr. Tilden] that has been done in most of the cases; sometimes they put it in the form of a resolution which necessitates an adoption by the Convention.

The question was then put on the resolution of Mr. Gerry, and it was declared adopted.

Mr. KINNEY offered the following resolution:

*Resolved*, That the Committee on Education be requested to inquire into the propriety of excluding from our public schools all children under the age of seven years.

Which was referred to the Committee on Education.

Mr. FRANCIS offered the following resolution:

*Resolved*, That the Committee on Counties, Towns and Villages, their Organization, Government and Powers be instructed to inquire into the propriety of prohibiting the Legislature from granting power to towns to bond themselves for the purpose of constructing railroads; and to devise some uniform and just system of appropriating money for local improvements.

Which was referred to the Committee on Towns, Counties, etc.

Mr. GOULD—I move that the Convention take up for consideration the resolution, offered by me yesterday, calling for information from the County Clerks, etc. It is necessary for the action of the Convention, it should be considered.

The SECRETARY then proceeded to read the resolution of Mr. Gould as follows:

*Resolved*, That the Secretary of this Convention be directed to procure from the several county clerks in this State, as soon as practicable, a statement embracing the following particulars from the years 1857 to 1866, both inclusive.

1. The number of indictments found in each year in all the criminal courts of the county.

2. The number of persons admitted to bail in each county in each year by said courts.

3. The aggregate amount of bail taken in each year in the courts of record.

4. The aggregate amount of bail ordered to be estreated in each year.

*Resolved*, That the Secretary be directed to procure from the several County Treasurers of this State, the amount of money paid to them on account of forfeited bail, in each of the years from 1857 to 1866, inclusive.

Mr. GOULD—I ask that an amendment be made to the last part of the resolution by adding the words "criminal cases."

There being no objection the resolution was so amended.

Mr. McDONALD—I wish to make an amendment requiring the amount of bail collected to be returned.

Mr. GOULD—That is embraced in it.

Mr. MASTEN—The resolution is defective in another particular. There are quite a large number of courts in the cities having extensive criminal jurisdiction which would not be embraced within this inquiry, in respect to which the county clerks would have no information.

Mr. GOULD—I only expected the information which was on the records of the county clerks.

Mr. BARNARD—I will state to the gentleman from Columbia County [Mr. Gould] that his information will be very imperfect. I know in the case of the county of Kings, all the bail bonds and bail pieces are filed in the office of the District Attorney, and if he will direct his inquiry in that direction, then it will embrace all the criminal courts in that county; but if he applies to the County Clerk he will get no information at all.

Mr. GOULD—I see there is some mistake or misunderstanding in regard to this resolution, and therefore, I will ask that it be laid over until tomorrow.

Mr. HADLEY moved to call up the resolution offered by him yesterday in reference to the Court of Appeals.

The Secretary then proceeded to read the resolution, as follows:

*Resolved*, That the Clerk of the Court of Appeals report to this Convention with all convenient speed:

1. The total amount of all funds and securities now held by him in trust, under any order, judgment or decree of any Court, including the late Court of Chancery, and that he specify the total amount of such funds and securities which has remained with said Clerk or his predecessors for more than twenty years, if any.

2. The total amount of such funds and securities that has so remained for fifteen years, and less than twenty years.

3. The total amount of such funds and securities that has so remained for ten years, and less than fifteen years.



4. The total amount of such funds and securities that has so remained for five years, and less than ten years.

5. In what manner such funds are invested and secured, and at what rate of interest.

The question was then put on the resolution of Mr. Hadley, and it was declared adopted.

Mr. FOLGER—I move to call up the resolution offered by me on the 18th, calling for information from the County Clerks. It is suggested by the gentleman on my right that the proper disposition of that resolution would be a reference to the Judiciary Committee; therefore I make that motion.

There being no objection the resolution was referred to the Committee on the Judiciary.

On motion of Mr. WEED the Convention adjourned.

FRIDAY, JUNE 21 1867.

The Convention met at 11 o'clock, A. M.

Prayer was offered by Rev. E. HALLEY.

The Journal of yesterday was read by the SECRETARY.

Mr. FULLER—In the Journal it is stated that I presented a memorial of Hon. Henry R. Selden, late Judge of the Court of Appeals. The Journal in that respect is incorrect. Judge Selden is now in Europe, and has been for a year past. I merely said I presented a memorial from a late Judge of the Court of Appeals.

The PRESIDENT—The Journal Clerk informs the Chair that the memorial was endorsed Henry R. Selden.

Mr. FULLER—It was not so endorsed by me, sir.

The Journal was corrected.

There being no further objection, the Journal was declared approved.

Mr. MERWIN—I desire to present a plan for the reorganization of the Judiciary, prepared by a Justice of the Supreme Court, and I move its reference to the Committee on the Judiciary.

Which reference was ordered.

Mr. GROSS—I present a petition from several progressive Societies and individual Citizens of the State of New York, praying for such changes in the Constitution of the State, as may secure a more equal share of religious liberty to all of its citizens. I ask that the petition be referred to the Committee on the Preamble and Bill of Rights.

Which reference was ordered.

Mr. FOLGER—From the Committee on Judiciary offered the following resolution:

*Resolved*, That the Committee on the Judiciary, or any one or more of their number whom they may designate, have power to take the testimony, or in their discretion, the written verified statement of such persons as they may see fit, who have heretofore been appointed or designated under rule of court, to examine into the condition of funds held under order of court by or in the name of any or all of the County Treasurers or other officers of the respective counties, such statement or testimony shall concern,

*First*. The general condition and amount of such funds.

*Second*. The security or insecurity of their investment.

*Third*. The losses or depreciation which may have been sustained.

*Fourth*. Any other matter bearing on their custody and control.

*Fifth*. The opinions of the persons in question as to the necessity and nature of any further checks, safeguards or other provisions for the care and protection of such funds.

The question was then put upon the resolution, and it was declared adopted.

Mr. FOLGER, from the Committee on the Judiciary, submitted the following report:

TO THE CONVENTION:

The Committee on Judiciary, to whom was referred the resolution of Mr. Pond of Saratoga, instructing it "to inquire into the expediency of so modifying the Constitution, as to permit juries in civil causes to render verdicts upon the agreement of a number less than the whole; and into the propriety of so amending the Constitution, as to prohibit the receipt by judicial officers including Justices of the Peace, of any fees or perquisites of office as a compensation for their services, or otherwise."

Do respectfully report that, as to the first branch of the resolution, they do not perceive that it is necessarily a matter for the consideration of a body charged with the revision and amendment of the organic law, but is rather a matter of detail for the action of the Legislature of the State, unless the question is affected by the second section of article first of the Constitution, which is in the words following:

"§ 2. The trial by jury in all cases in which it has been heretofore used, shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases, in the manner to be prescribed by law," or by the following passage in section sixth of the same article: "No person shall be deprived of life, liberty or property without due process of law."

This article is found in what is commonly called "*the Bill of Rights*," and as the Preamble and Bill of Rights have been made by the Convention the subject for, and have been committed to a separate standing committee of the body, the Committee on the Judiciary have conceived that so much of the resolution as is above specifically indicated does not come properly within their jurisdiction, but that it should be committed to standing Committee No. 1, on "the Preamble and Bill of Rights."

The Committee on the Judiciary therefore submit the following:

*Resolved*, That the Committee on the Judiciary be discharged from the further consideration of so much of the resolution of Mr. Pond, of Saratoga, as relates to the subject of juries and their verdicts; and that the same be committed to the standing Committee on the Preamble and Bill of Rights.

CHAS. J. FOLGER,

Chairman.

Dated June 21, 1867.

Mr. POND—I am not particular to which committee this subject is referred, but it strikes me, sir, that if it is proper in any point of view to refer this subject to the Committee upon the Bill of Rights, it is equally a subject proper to be referred to the Judiciary Committee, and perhaps

it ought to be considered before being finally acted upon by the Convention to ascertain which committee it is most appropriately to be referred to. It certainly comes within the section of the Constitution referred to by the committee, but it certainly has reference to subjects which pertain to the Judiciary Committee, of which they shall take cognizance, and it might be equally well if referred to the committee indicated by the report of the Judiciary Committee; but, if sent to the Committee upon the Bill of Rights, it strikes me to be equally proper for them to say that it pertains to subjects coming properly within the cognizance of the Judiciary Committee, and they report it should be referred to them. For the purpose of examining the subject, I move to lay that report upon the table for the present.

The question was then put on the motion of Mr. Pond and it was declared carried.

Mr. SEAVER from the Committee on Printing, submitted the following report in relation to a communication from the State Librarian of Michigan.

The Committee on Printing to whom was referred the communication of the State Librarian of the State of Michigan, embodying a resolution of the Constitutional Convention of that State, proposing an exchange of journal, debates and proceedings, with this Convention, beg leave to offer the following resolution:

*Resolved*, That the proposition of the Constitutional Convention of the State of Michigan, now in session to exchange ten copies of the Journal and Debates and Proceedings of that Convention, for a like number of the Journal and Debates and Proceedings of this Convention, be and the same is hereby accepted; and that the Secretary of this Convention be instructed to cause the said number of copies to be regularly transmitted to the State Librarian of the State of Michigan, and that a sufficient number of copies in addition to the usual number are hereby ordered to be printed to conduct such exchange.

J. J. SEAVER, *Chairman*.

Mr. SEAVER—It is not deemed by the committee necessary, perhaps, to print any extra number, so that the usual number of 800 copies will supply the demand required by the exchange. But if 800 copies are found not sufficient, then an additional number can be printed.

Mr. MURPHY—I do not know that the gentleman is aware of the fact that there is another State Convention now in session, some of whose debates I have seen and read with great pleasure, and I hope, therefore, that this resolution may be amended so far as to extend the same courtesy to that Convention. I refer to the Convention of the State of Maryland. I move therefore an amendment that a like number of copies of our proceedings, be transmitted to the Convention of the State of Maryland now in session.

The PRESIDENT—The Chair would inquire whether the usual number of copies would allow that to be done?

Mr. E. BROOKS—The Chairman of the Committee, on Rules [Mr. Sherman] is not now in his seat. But I think I can say that the number authorized by the Committee on Rules to be printed under the regular order, would supply

both of these extra copies which have been moved.

Mr. WEED—I understand that this report is in reference to a resolution in answer to a communication from the Convention of the State of Michigan. I submit to the gentleman from Kings [Mr. Murphy], that his amendment is not strictly in order; that it should be an independent resolution of this Convention, proposing to exchange with the Convention of the State of Maryland. They have not made any proposition to us, but the Convention of the State of Michigan has, and this is an acceptance of that proposition and provision for the exchange. I would gladly go with him in asking the Convention of Maryland to exchange with us.

Mr. MURPHY—In all matters of this kind, I am for the substance—the form is immaterial. I would like myself, to have the benefit of the debates and propositions presented to the Maryland Convention. As I said before, I have read some of them with a great deal of interest, especially their reports upon the Executive Department of that State. I do not see any incongruity in amending this report by appending a further resolution to the effect I have mentioned, coupled with a request that the Maryland Convention will reciprocate and exchange. However, if it is the sense of the Convention that we should have a separate proposition I am willing to withdraw the motion.

Mr. ALVORD—I renew the proposition of the gentleman from Kings [Mr. Murphy] with this addition that it be coupled with request that they send us a like number. It seems to me entirely germane to the matter. It might as well come in here instead of having a distinct, separate proposition; and under the advice of the gentleman from Richmond [Mr. E. Brooks] the usual number printed will be sufficient.

Mr. WEED—I, like the gentleman from Kings [Mr. Murphy], desire to have the substance, but at the same time I think there is a proper way of doing it. We have here a communication sent us from the Constitutional Convention of the State of Michigan. We are now to pass a resolution accepting that; it is to be returned to that Convention through the proper channels, and then there will be an exchange between this Convention and the Convention of Michigan. I cannot see why we should engraft upon this resolution of acceptance a proposition to exchange with the Maryland Convention and have that sent to Michigan. It seems to me that the only proper way to get at it is to pass a resolution asking the Maryland Convention to exchange with us. It is a matter of no great moment; at the same time I can see no propriety in adding this to the acceptance of the simple and direct proposition tendered to us by the Convention of Michigan.

Mr. McDONALD—As I understand the fact to be this Convention has not yet ordered any debates, at all, and the contract only provides that we may order them if we see fit. I, therefore, move to amend the resolution by adding, that this Convention order the usual number, of 800 copies of the debates, to be printed so that we can have them to send. Perhaps, however, I had better withdraw my amendment, and offer it as a separate proposition.

The question was then put upon the amendment offered by Mr. Alvord and it was declared adopted.

The question then recurred on the resolution reported by the Committee on Printing as amended and it was declared adopted.

Mr. FIELD—I move a reconsideration of the vote of yesterday on the resolution reported by the Select Committee of which the gentleman from Rensselaer [Mr. Francis] is Chairman, in favor of publishing in two daily papers in this city, the debates of this Convention. If it is proper, at this time, I desire simply to state that the object of this motion is not to defeat the publication of these debates, but to have them published in what is thought by many to be the only legal and proper way; that is in the way proposed by the resolution of the gentleman from Chautauqua [Mr. Barker] unless it can be done in some better way.

Mr. MURPHY—I move to lay that motion on the table.

Mr. FIELD—I rise to a point of order, that a motion to reconsider lies on the table under the rule.

Mr. BROOKS—As the House is very thin, and the question is an important one, I hope the gentleman who made the motion, [Mr. Field] will allow it to be postponed until Tuesday next.

Mr. FIELD—As I have said, it does lie on the table, under the rule.

The PRESIDENT—The point of order is well taken. The resolution will lie on the table under the rule.

Mr. GERRY offered the following resolution for reference:

*Resolved*, That the Board of Commissioners of the Metropolitan Police be requested to furnish the Secretary of this Convention with fourteen printed copies of the last annual report of such Board to the Legislature of this State; such copies to be distributed among the members of the Committee on the Pardoning Power and the Committee on State Prisons, and the prevention and punishment of crime.

Mr. GERRY—I would like to ask the Convention to suspend the rules; and for the reason, that we shall probably adjourn to-day until Monday or Tuesday of next week, and in the judgment of many of my colleagues on the Committee on the Pardoning Power, it is necessary to have this document, and the intervening time may be employed in the procurement of it, as I do not suppose there will be any difficulty in obtaining it.

Mr. FIELD—I rise to a point of order, that the rules cannot be suspended except upon one day's notice.

Mr. GERRY—It can be done by unanimous consent.

The PRESIDENT—The chair holds that it may be done by unanimous consent.

There being no objection, the question was put on the resolution, and it was declared to be adopted.

Mr. E. BROOKS offered the following resolution for reference:

*Resolved*, That it be referred to the Committee on Cities, to inquire into the expediency of amending the Constitution as follows: The Leg-

islature shall, at its first session after the adoption of this Constitution, pass a general act of incorporation, prescribing a form of government for every city in this State having a population of ten thousand souls. All authority conferred by said act is hereby vested in the qualified voters of the cities respectively, who shall be authorized to govern themselves, through a Mayor and one or more legislative bodies, to be elected once in every year. Future cities shall be authorized to come under the government of said act, which shall continue in force during the existence of this Constitution.

Which was referred to the Committee on Cities.

Mr. HAND offered the following resolution for reference:

*Resolved*, That the Committee on the Rights of Suffrage, &c., be directed to inquire whether persons addicted to habitual drunkenness to such extent as to unfit them for ordinary business (requiring care and skill) should be excluded from the right of suffrage.

2d. Whether in cities persons repeatedly convicted of crime or misdemeanor below the grade commonly deemed "infamous crime" should not be deprived of the right of suffrage in the election of all municipal officers made elective by this Constitution.

Which was referred to the Committee on the Right of Suffrage.

Mr. ARCHER offered the following resolution for reference:

*Resolved*, That there be printed 500 copies of the rules and standing committees together, in pamphlet form, for the use of the Convention.

Which was referred to the Committee on Printing.

Mr. S. TOWNSEND offered the following resolution for reference:

*Resolved*, That the Committee No. 9 on Finances, be requested to consider and report to this body, upon the policy of providing that so much of the expenditures of this State, as are required to be raised by taxation, for *General or State purposes*, be allotted to the several counties, solely upon the *Basis of Population*—the proper equivalent of *Representation*.

Which was referred to the Committee on Finances of the State.

Mr. MONELL offered the following resolution for reference:

*Resolved*, That the Committee on the powers and duties of the Legislature, be requested to inquire into the expediency of prohibiting, by a constitutional provision, the Legislature from passing any bill within five days of its adjournment; and also into the expediency of so amending the Constitution, as to require that every bill, after its passage before it shall become a law, shall be signed by the Governor, during the session of the Legislature, at which the same may be passed.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. SMITH offered the following resolution for reference:

*Resolved*, That the Committee on the Powers and Duties of the Legislature be requested to consider the expediency of reporting a constitutional provision giving the Legislature power to

authorize individuals and corporations to appropriate lands and unimproved water privileges for manufacturing purposes, on making compensation to owners and persons injured thereby.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GOULD—I desire the Convention to take up the resolution offered by me, calling for information from the county clerks etc., and I ask leave to withdraw that resolution; as it has been suggested to me by several gentlemen, that there are some courts whose decisions would not be reached by the resolution as I have drawn it. I have accordingly prepared another resolution under the advice of these gentlemen, which will embrace all the information I seek to obtain.

There being no objection the resolution was taken up and withdrawn.

Mr. GOULD offered the following resolution for reference.

*Resolved*, That the Secretary of this Convention be requested to procure as speedily as possible, from the Clerks of the several Criminal Courts of this State, including County Clerks; the Clerk of the Court of General Sessions of the city and county of New York; of the Superior Court of Buffalo; of the Mayor's and Recorder's Courts of cities having criminal jurisdiction, as well as District Attorneys in the respective counties, information upon the following points for each year between 1857 and 1863, both inclusive:

1. The number of indictments that have been found in each county.
2. The number of accused persons admitted to bail.
3. The aggregate amount of bail estreated in each year.

And that he also be requested to procure from each of the County Treasurers and the Comptrollers of cities, the amount of money received by them in each year on account of estreated bail.

Mr. T. W. DWIGHT—I desire to submit an amendment to that resolution, by adding "also the number of cases in which sentence has been suspended, and the number of cases in which, after such suspension, sentence has been actually rendered." I wish to say a word with regard to the object proposed by this amendment. It is well known to gentlemen who are conversant with criminal jurisprudence that there has sprung up in England and in this country, a practice—not sanctioned regularly by legislation, but grown up by usage—of suspending sentence in criminal cases. Persons who have given attention to this subject regard it as a direct violation of the great principles laid down by Beccaria and other standard writers on criminal jurisprudence, that sentence ought to follow upon the conviction of the prisoner, in such a way that it will be associated in the minds of the criminal classes like cause and effect, coming as it were in the regular sequence of effects, from the operation of causes in nature. And moreover, that the assumption of this power to suspend sentence is in effect an assumption of the pardoning power by the individual officer who exercises it; and for these reasons I have thought it best to present this amendment in order that the facts can be produced before the Convention

for the consideration of the propriety of inserting a clause in the Constitution similar to that which is found in the Constitution of several States, that the natural effect of a law shall not be suspended.

The amendment was accepted.

The question was then put upon the resolution, as amended, and it was declared adopted.

Mr. A. J. PARKER offered the following resolution for reference:

*Resolved* That the Committee on Cities, their organization and powers, be requested to inquire into the expediency of so amending the Constitution as to provide for the government of all the cities of the State, and for the organization and government of all the cities hereafter to be organized in this State, *under general laws*, and that all special legislation in regard to the organization and government of cities be prohibited.

Which was referred to the Committee on Cities.

Mr. LAPHAM—At the request of the Chairman of the Committee on the Pardoning Power, I desire to call up a resolution offered by me on Tuesday last.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Governor of the State be requested to communicate to this Convention, as soon as practicable, a list containing the number of the applications made to the Executive for pardons, during the years 1864, 1865 and 1866; the number of such applications granted, with the nature of the offenses in classes.

Mr. HARRIS—I hope that the mover of that resolution will consent that it lie over for a day, as I want to examine the Manual which has been placed upon our tables, to see what information we have already upon the subject.

Mr. E. BROOKS—Mr. President, I would state that a great part of the information called for, is found in the first pamphlet of the Manual. On page 5 of the first pamphlet, will be found nearly the precise information called for by the resolution except as to its details. I can state in a word, that since the commencement in the organization of this State and the existence of the pardoning power, some eleven thousand pardons have been granted, and during two years of the administration of Governor Fenton, he reports that 299 pardons have been granted. If gentlemen will take the pains to examine this Manual in detail, they will find a great deal of the information which is being called for.

Mr. HARRIS—I hope that the mover will consent that this resolution lie over. I had prepared a similar resolution myself, but at the suggestion of some one that this information was coming in the Manual, I withheld it.

Mr. LAPHAM—I have no objection if the Chairman of the Committee is satisfied.

Mr. M. I. TOWNSEND—I suppose that the report of the Committee on Pardoning Power need not be among the earliest which is submitted to this body; necessarily it would be later, and therefore, I presume no time will be lost in suffering the resolution to be laid over.

Mr. BELL offered the following resolution:

*Resolved*, That the Commissioners of the Land Office be respectfully requested to report to this Convention, as soon as practicable, the following



particulars in regard to the "Salt Reservations" of the State:

1. The quantity of land originally set apart by the State for the purpose of manufacturing salt.

2. The quantity of land now owned by the State and devoted to that object.

3. The towns and counties in which said lands are located, and the number of acres in each locality.

4. The present value of such lands, if the same can be readily ascertained; or the nearest possible approximate value thereof.

5. Cost and present value of the salt wells, structures and improvements thereto, made and owned by the State.

6. The probable value of the Salines connected therewith.

7. The yearly expense to the State for the care and management of the same, including new structures, repairs, superintendence, etc.

8. The yearly revenues received therefrom.

Which were laid over under the rule.

Mr. MILLER offered the following resolution for reference.

The SECRETARY proceeded to read the resolutions as follows:

*Resolved*, That the Committee on the Powers and Duties of the Legislature, be instructed to inquire into the expediency of reporting a constitutional provision, prohibiting the Legislature taking cognizance or having jurisdiction of any claim against this State, that has not accrued within the preceding six years.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. MERWIN offered the following resolution for reference:

*Resolved*, That the Constitution be so amended (1) that senators shall hold their office for four years, and one-fourth of their number be elected each year; (2) that assemblymen be elected for one year, and every 25,000 of population be entitled to one member, and that they be elected by single districts.

Which was referred to the Committee on the organization of the Legislature.

Mr. DUGANNE offered the following resolution for reference:

*Resolved*, That it be referred to the proper committee to inquire whether the agricultural or other industrial interests of any portion of the people of this State are injuriously affected by feudal tenures or other anti-republican conditions or restrictions.

Which was referred to the Committee on Industrial Interests.

Mr. A. R. LAWRENCE offered the following resolution:

*Resolved*, That it be referred to Committee No. 3, "on the Powers and Duties of the Legislature," to inquire as to the propriety and expediency of amending section 13 of article 3 of the Constitution, so as to read as follows: "All bills for the imposition of taxes, or for the raising of revenue, shall originate in the Assembly, but the Senate may propose or concur with amendments, as on other bills."

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. McDONALD called up a resolution offered by him in relation to printing of documents, and offered the following as a substitute:

*Resolved*, That this Convention hereby order eight hundred copies of the debates to be printed, and that it be referred to the Committee on Printing to report as to the proper disposition of the same.

The PRESIDENT—The Chair would inform the gentleman from Ontario that rule 41 already provides for that, and they will be printed, of course, without any special order.

Mr. WEED—I would suggest that rule 41 does not provide for the printing of the debates, it provides for the printing of documents that may be ordered, but as I understand it, the debates have not yet been ordered to be placed on our files.

The resolution was then referred to the Committee on Printing.

Mr. LANDON offered the following resolution for reference.

*Resolved*, That the Committee on the Preamble and Bill of Rights be requested to inquire into the expediency of so amending section 5, of article 1, of the Constitution, as,

1. To prohibit capital punishment.

2. To require the Legislature to provide by law for the immediate taking, in criminal cases, of the testimony of witnesses who cannot give bail for their appearance at the trial, and thereupon discharging such witnesses.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. GRAVES—I move to take up the resolution offered by myself, and which is to be found on page 45 of the Journal.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That a committee of five be appointed by the Chair to report to the Convention at as early a day as practicable, whether, in their opinion, a provision should be incorporated in the Constitution, authorizing the women in this State to exercise the elective franchise, when they shall ask that right by a majority of all the votes given by citizen females over the age of twenty-one years, at an election called for that purpose, at which the women alone shall have the right to vote.

The question was then put on the motion to take the resolution from the table, and it was declared carried.

The PRESIDENT announced the pending question to be on the resolution as read.

Mr. GRAVES—Mr. President: I do not desire at this time to discuss the merits of the resolution; but allow me to suggest that there are four persons who are interested in the questions involved in it. The first class is what is opprobriously known as the strong-minded women, who claim the right to vote upon the ground that they are interested and identified with ourselves in the stability and permanency of our institutions, and that their property is made liable for the maintenance of our government while they have no right to choose the law-makers, or to select the persons who are to assess the value of their property liable to taxation. They claim that they are not untaught in the science of government to which

the right of administration is denied to them. The second class includes both males and females who sympathize with the first class and who claim that there is no disparity in the intellect of men and women, when an equal opportunity is afforded by education, for progress and advancement. They also claim that our country is diminishing all the time in moral integrity and virtue, and ask that a new element be introduced into our governmental affairs by which crime shall be lessened and the estimate of moral virtue be made higher. The third class is a class which urges that there should be no distinction between males and females in the exercise of the elective franchise, and they claim that it is anti-democratic that there should be a minority in this country to rule its destinies. There is a fourth class who believe that the right to exercise the elective franchise is not inherent, but permissive, and that the people are the government, and that this power of the elective franchise is under their immediate control, and they claim the right to become part and parcel of the government which they help to support and maintain. Now, these four classes, differing in opinion upon this great question, constitute a very large body of very worthy and high-minded and intelligent men and women of this State who have long sought to enlarge the elective franchise, and they claim the deliberate consideration of this body upon the ground of equality. Now this resolution gives to women themselves, the power of discussion and comparing of minds, etc., to settle the question whether they will avail themselves of the desired right to exercise this power of voting. And as it differs from all other questions which have originated here with reference to this right of women to vote, I submit it is a proper resolution to be referred to a select committee to be appointed for that purpose.

Mr. BICKFORD offered the following amendment to the resolution:

Strike out the words "votes given by."

Mr. BICKFORD—The object of this amendment is this: That the women of this State shall not be forced to vote even on this question. There are a great many ladies of the State who will not vote on any question, and the object of the amendment is that their voices may be counted against the proposition, even if they do not vote: so that they shall not be compelled to go to the polls even for the purpose of saying that they do not want the privilege of voting.

Mr. WEED—Without discussing the merits of this question at all, it seems to me that as Committee No. 4 has this question especially in charge, and as this resolution was introduced prior to the appointment of that, and before any committee was authorized on this subject, it is proper and right before this question takes up the time of this Convention, it should go before the ordinary committee, and come before us upon their report. I therefore move that this resolution be referred to Committee No. 4 on the Right of Suffrage and the qualification of voters.

Mr. VEEDER—I would inquire whether that motion precludes any further amendment before it is referred? I submit that we should have a fair opportunity of amending the resolution, and then—

The PRESIDENT—Under rule 23, the motion to commit takes precedence of the motion to amend.

Mr. VEEDER—Then I hope the gentleman from Clinton [Mr. Weed] will withdraw his motion, that I may offer an amendment, and then let the whole subject go to the committee.

Mr. WEED—Any amendment that the gentleman from Kings [Mr. Veeder] may see fit to offer, can be offered as an independent resolution, which could be referred to the committee. If my motion is withdrawn it will open discussion upon the question.

Mr. VEEDER—If the gentleman will withdraw his motion, I will offer my amendment, and then renew his motion.

Mr. S. TOWNSEND—Are amendments now in order to the proposition to go with the resolution to the Committee?

Mr. CONGER—I would suggest a point of order; that a resolution specially directing a reference to a special committee cannot be referred to a standing committee. The subject-matter only of the resolution can be referred.

The PRESIDENT—The subject-matter of the resolution of the gentleman from Herkimer [Mr. Graves], it is moved by the gentleman from Clinton [Mr. Weed], shall be referred to the Committee on the Right of Suffrage.

The question was then put on the motion of Mr. Weed to refer the subject embraced in the resolution of Mr. Graves to the Committee on the Right of Suffrage, and it was declared carried.

Mr. CARPENTER offered the following resolution:

*Resolved*, That it be referred to the standing committee on the Preamble and Bill of Rights, to consider the propriety of erasing from section 8 of article 1 of the present Constitution, the last clause of said section, to wit: "and the jury shall have the right to determine the law and the fact."

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. GRAVES—I desire to call from the table the resolution to be found on page 74 of the Journal.

The SECRETARY proceeded to read the preamble and resolution, as follows:

*Whereas*, The use of adulterated, intoxicating liquors has become an alarming evil, increasing domestic sorrow, creating pauperism and crime, thereby adding to the burdens of taxation; therefore,

*Resolved*, That a committee of one from each judicial district be appointed to report:

1st. Whether, in their opinion, under our republican form of government, any authority should be granted to sell, or any prohibition enacted against the sale of intoxicating liquors, either by a legislative or organic law of the State.

2d. Whether, in their opinion, the sale of intoxicating liquors should be denied to all except such as shall receive a certificate under the hand and official seal of a person properly qualified and duly appointed, showing that the liquor offered for sale had been carefully analyzed, and was unadulterated, pure, and contained no poisonous drug.

3d. Whether, in their opinion, any law author-

izing or prohibiting the sale should not be organic instead of legislative, thereby creating a rule controlling and regulating public opinion, and relieving each successive Legislature from the pressing importunities of those in favor of or opposed to the sale of intoxicating drinks.

The question was then put on the motion of Mr. Graves to take the preamble and resolution from the table, and it was declared carried.

The question then recurred on the preamble and resolution, and they were declared adopted.

Mr. BALLARD offered the following resolution:

*Resolved*, That when the Convention adjourns this day, it adjourns to meet on Monday next at 7½ o'clock, P. M.

Mr. GREELEY—I move to amend by making it 11 o'clock A. M.

Mr. BALLARD—I made the time 7½ o'clock, instead of 6 in the afternoon, as by putting the meeting at that hour it enables us to hold an evening session; whereas, if we made it at 6 o'clock, it being the usual hour for tea, members would not be able to be present.

Mr. GREELEY—I move to amend by making the hour 11 o'clock, A. M., instead of 7 P. M.

Mr. MONELL—I move to further amend by striking out the word "Monday" and inserting Tuesday.

The question was put on the motion of Mr. Monell, and it was declared lost.

The PRESIDENT then announced the question to be on the amendment proposed by Mr. Greeley, to make the hour of meeting 11 o'clock on Monday, instead of 7 o'clock.

Mr. MILLER—I would suggest that if it is intended that we should go home during the recess, it would be impossible for us to reach here by 11 o'clock, without traveling on the Sabbath. We can have just as long a session if we begin business at half past seven o'clock, as if we had a session at 11 o'clock in the day-time. I understand that 7½ o'clock is the time fixed by the original motion of the gentleman from Cortland [Mr. Ballard].

Mr. SEAVER—I trust that this motion will not prevail. If there is any business for this Convention to do, let us be about it and do it. It is very convenient for those who live within a few miles of the Capital, to adjourn until Monday or Tuesday, and leave those who reside at a greater distance here in idleness. An adjournment or recess of this Convention destroys the power of committees to do anything by taking away those who live in the immediate neighborhood, and there is nothing for those who remain here to do because they cannot get a quorum. If there is no committee going to transact any business, it is trifling with the time and the patience of the people of this State. We are here in the service of the people, and I hold that we ought to serve them certainly more than half of the time. If there is nothing for this Convention to do, let us adjourn for a week, or two weeks, until something arises for us to do, and then we can come back and attend to it, get through with our business, and go home.

Mr. BICKFORD—It is utterly impossible, Mr. President, to keep committees together and make

them do any work, unless this Convention holds daily sessions; and it is important that we should proceed to consider the various subjects that are to be discussed in this body. As has been said by the gentleman from Franklin [Mr. Seaver], the delegates will disperse during the recess, and it will be impossible to do any business in committee. I, therefore, hope that both the resolution and the amendment to adjourn to any hour on Monday will be voted down, for many of us cannot go home.

The question was then put on the amendment of Mr. Greeley, and it was declared lost.

The PRESIDENT then announced the question to be on the original motion of Mr. Ballard.

Mr. LEE—I move to amend the resolution so that it shall read that when this Convention adjourns it will adjourn to meet on Saturday at 11 o'clock.

Mr. HAND—Such an adjournment would follow as a matter of course if the motion of the gentleman from Cortland [Mr. Ballard] is lost. It does not require an amendment.

Mr. M. H. LAWRENCE—I trust that the last amendment will prevail. I am sorry to see the Convention adjourn for such long recesses to accommodate gentlemen who live on the river, in the city of New York, and on the lines of the railroads. There are many gentlemen in this Convention who find it impossible to get home and return in time for business, and those who are compelled to remain here have nothing to do as soon as the adjournment occurs.

The PRESIDENT—The Chair regards the motion of the gentleman from Oswego [Mr. Lee], and the voting down of the motion of the gentleman from Cortland [Mr. Ballard], as being equivalent questions.

Mr. LEE—I understand that, but I wish to call attention more prominently to the fact by making the motion. When I was a boy and went to school, if we had every other Saturday for a play-day, we thought we were doing pretty well. I think that, having now reached the age of manhood, and having assumed the responsibility of discharging certain important duties intrusted to us by the people, we should now expect, except for due cause, to remain here and discharge our duty, rather than leave our work to go home. As has been already said, I think it entirely unjust to those members of the Convention who, from the very nature of the case, are unable to return home, and are therefore compelled to remain here with their hands tied, and await the convenience of other gentlemen to enable them to resume work. We have already had adjournments for two or three days each week since we have been in session, and at this rate we shall not be prepared to submit the work of committees to the Convention for it to decide for a long time to come. I hope that gentlemen will seriously consider this matter, and continue sessions without an adjournment of more than a single day. In a few days the 4th of July will be upon us, and that being a national holiday, we shall adjourn of course. At the rate at which we have been going on, we will spend more than half of our time in idleness.

Mr. BALLARD—It is well known that after these committees were formed and organized, the

suggestion was made and adopted by most of them that each member prepare and submit his ideas to his committee, for future consultation in reference to the matters referred to it, to enable its members to properly mature a report. Whether the Convention adjourns or not this afternoon, there will be certain members of the committees who will remain here, and they will devote their time to the subject-matters which are to come before their respective committees. If we continue in session, they will be interrupted in their labors in this regard by the sessions of the Convention, and as has been suggested, there will manifestly be scarcely a quorum of members here to-morrow. Again, it is well known that our courts are now being held in many parts of the State, and many members of the Convention have business at those courts which must be attended to. In a few days that pressure will be over. I think that instead of our business being interrupted by the proposed adjournment, it will be promoted by its taking a recess until Monday at 7½ o'clock. With the view of not interrupting, but promoting the labors of the Convention, I made the motion.

Mr. BICKFORD called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. McDONALD—I move, as an amendment, that when we adjourn to-morrow, we adjourn to meet on Monday evening, at 7½ o'clock.

The question was put on the amendment of Mr. McDonald, and it was declared to be lost.

The question then recurred on the resolution of Mr. Ballard, and it was adopted by the following vote:

**Ayes**—Messrs. C. L. Allen, Armstrong, Andrews, Archer, Ballard, Barto, Beadle, Bergen, W. C. Brown, Burrill, Carpenter, Cassidy, Chesebro, Clinton, Cooke, Comstock, Corning, Curtis, Daly, C. C. Dwight, T. W. Dwight, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Francis, Garvin, Gerry, Goodrich, Grant, Gross, Hadley, Hale, Hand, Harria, Hitchman, Huntington, Jarvis, Krum, Lapham, Law, A. Lawrence, Jr., Livingston, Masten, Mattice, McDonald, Miller, Monell, More, Morria, Nelson, A. J. Parker, Pond, Prindle, Robertson, Roy, Rumsey, A. D. Russell, Schoonmaker, Sheldon, Silvester, Smith, Stratton, Tilden, S. Townsend, Veeder, Weed, Wickham, Young—71

**Nays**—Messrs. A. F. Allen, Alvord, Axtell, Baker, Barker, Beals, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, Case, Clark, Cochran, Conger, Duganne, Eddy, Ely, Field, Fuller, Gould, Graves, Greeley, Hammond, Hitchcock, Ketcham, Kinney, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merrill, Merritt, Merwin, Paige, President, Reynolds, Root, L. W. Russell, Seaver, Van Campen, Wales, Wakeman, Williams—46.

Mr. GREELEY—I offer the following resolution—that this Convention now take up and consider the communication from the Commissioners of the Canal Fund in answer to a resolution of this body.

The PRESIDENT—There is no need of a resolution. The communication can be taken up on the call of the gentleman.

Mr. GREELEY—Then I call up the communication for consideration.

The PRESIDENT—The Secretary will proceed to read the communication referred to.

Mr. GREELEY—I think it is hardly necessary, Mr. President, to have it read again, it has been read once and is on our files.

The PRESIDENT—Unless the reading is desired, it will be dispensed with.

Mr. GREELEY—Mr. President, I offered the original resolution, to which the communication of the Commissioners of the Canal Fund on our files is intended as a response, because I desired more compact and condensed information in regard to the canals. I wished gentlemen in this Convention to see—

Mr. ALVORD—I rise to a question of order. I am not aware that the gentleman from Westchester [Mr. Greeley] can address the Chair or this Convention except there is some distinct motion before the body.

Mr. GREELEY—I did make a distinct motion, but the Chair decided that my call for the consideration of the communication was all that was necessary.

Mr. ALVORD—That does not bring the matter of the communication substantively before the Convention. To do that requires some motion.

Mr. GREELEY—Then I move its reference to the Committee on Canals. Will that do? I offered the original proposition. Mr. President—

The PRESIDENT—The Chair will inform the gentleman from Westchester [Mr. Greeley] that in discussing a question of reference the merits of the subject cannot be discussed under the rules.

Mr. WEED—I rise to a point of order. A motion to refer is not debatable.

The PRESIDENT—The Chair has informed the gentleman that on a motion to refer, the subject-matter involved is not debatable.

Mr. GREELEY—May I ask the Chair upon what motion I would be allowed to address the Chair with reference to this paper? [Laughter.]

The PRESIDENT—The Chair will leave the gentleman from Westchester [Mr. Greeley] to take his own course, not deeming it to be its province to instruct the gentleman. The Chair simply calls attention of the gentleman to the rule providing that on a motion to refer, debate on the principal question is not permissible.

Mr. GREELEY—Then I move that the report be returned to the Commissioners of the Canal Fund. Will that be in order?

The PRESIDENT—It will.

Mr. GREELEY—Mr. President, I will state my—

Mr. ALVORD—I rise to a point of order. The gentleman [Mr. Greeley] has not withdrawn his original motion to refer it to the Committee on Canals.

Mr. GREELEY—I do withdraw it, Mr. President, and I now make the motion that this paper be returned to the Commissioners of the Canal Fund. Mr. President, this is a very remarkable paper. I will read the first statement in it:

"The Commissioners understand that the net cost or profit of the several canals is to be established by a comparison of the aggregate expenditures, including interest, with the aggregate receipts, and they assume that it was the intention to state an interest account on receipts as well as



payments, although the language of the resolution fails to express it."

Sir, what I desired to arrive at was the actual net cost of the canals to the people of the State of New York, as they stand to-day, by such methods as should seem most in accordance with the spirit of that resolution. I am very, sorry (though the Commissioners say that they comprehend very well what the resolution meant) that the words did not express the intent. In the next place they tell us this:

"On this construction of the scope and purpose of the resolution, the Commissioners conclude that the exigency under which, in accordance with the proviso, they are required to report, has not arisen"—(I feared that, Mr. President, when that proviso was put in),—"as the information called for will be given substantially in the detailed statements of the Auditor of the Canal Department, included in the manual prepared for the use of the Convention. Such of the statements as have not already been published will be included in following pages of the volume devoted to statistics, and laid on the tables of members in a few days."

Mr. President, the third week of this Convention has nearly closed and we have voted to close it to-day. On the first day of our session, I think it was, I offered the resolution of inquiry, and I was then told to wait a few days and the information would be furnished. We are now told that by-and-bye this information will come in certain detailed statements. A very intelligent member of this Convention informed me that he had devoted six hours to the study of the documents emanating from the Canal Auditor, and that he thinks he understands about how this matter stands. Now what I wished, was to have the means afforded this Convention of understanding how the State account stands with the canals, without wandering through many documents, and devoting six hours to their study, as my friend has done. They say that in certain detailed statements that have been or will be given us, we will find the leading material facts called for. What I wish, is a single statement, whereby we may see, as at a glance, how the State stands in its account with the canals. I have no doubt, if members of this Convention were able to give two or three weeks to the study of canal documents, running back through a number of years, they might obtain a very fair understanding of this subject. But certainly, that cannot be necessary. It must be within the power of the State officers to give these facts within a small compass. I have before me a document—a volunteer document—which has been laid on our desks, entitled "The Canals, by James Barnes." I see in this account stated, such as I wish to have; and all within a space of two inches in width by four inches in length. It states what is the original cost of each of the canals of this State, and how much has been returned to us from each of the canals. According to this statement, the canals of this State have cost us \$125,000,000, and they have returned us \$98,000,000, so that to-day, the State has paid out for canals, more than it has received from the canals, about \$27,000,000. That is a very intelligent statement, and just such a one as

I desire to have, and to have it from an official source. I find it here in a volunteer document. I would like to have it from a State officer. I do not find any such information from State officials. I find here, in this manual, statistics in reference to the canals, but nothing like that which is called for by the resolution I introduced. Let us know what each canal has cost the people of the State, and what amount has been returned from each canal. I find in the statistics sent us by the Canal Auditor, what each canal has cost to run it, I may say, for twenty years back. I am very thankful for that, if it is all we can get. But I wish to know from State officers what each canal has cost us, as clearly as may be, and how much it has returned to us. This volunteer document of Mr. Barnes says that the Erie canal has cost \$83,000,000, and that it has returned \$73,000,000; that the Champlain canal cost \$7,500,000, and that it has returned \$4,750,000; that the Oswego canal has cost \$6,250,000, and that it has returned over \$9,000,000; that the Genesee Valley canal has cost \$11,000,000, and has returned less than \$1,300,000.

Mr. ALVORD—I would suggest to the gentleman from Westchester [Mr. Greeley], that as he has read the facts, the statements are directly the reverse of what is true. He must have read the returns for the outgoes.

Mr. GREELEY—I am reading it exactly as it is here, except that I am giving the sums in round numbers. To be accurate, it says that the estimated cost of the Genesee Valley canal is \$11,160,306.27, that the total revenues from that canal are \$1,295,850.09.

Mr. ALVORD—Will the gentleman read the figures in reference to the Oswego canal again?

Mr. GREELEY—Estimated cost \$6,273,641.01; total revenues \$9,177,171.35.

Mr. ALVORD—Then that volunteer statement is not correct.

Mr. GREELEY—It may not be correct. I am not reading it as a correct statement, but only as the kind of concise statement of the facts which I desire to be laid on our tables under the authority of a State officer. I am reading it to show what I want this Convention informed of on authority. I have not quoted it as true, but I am showing how simple a matter it would be for a State officer to make a statement that we may see, as on the fingers of one hand, what each canal has cost the people of this State, and what each canal has returned to us. I now take up some of the statistics furnished us by the Canal Auditor. He gives statistics for the last twenty years. It was estimated that when the canals were enlarged, the revenues would increase at the rate of three per cent per annum, and on that basis it was estimated that there would be \$75,000,000 of revenue in twenty years; or rather that the estimated aggregate receipts for the last twenty years would be \$75,000,000, the estimated outgoes \$12,500,000, and the estimated net income \$62,750,000. I give the sums in round numbers. The actual receipts have been \$62,500,000, instead of \$75,000,000; the actual outgoes have been \$20,000,000 instead of \$12,500,000, making the actual net income \$42,500,000, which is \$14,000,000 less than the estimated net income. In

another part of these statistics I read that there have been claimed during the last twenty years \$9,250,000 for canal damages, and that \$3,250,000 have been awarded on such claims. The rest, I suppose, will come in here from year to year, until the claimants weary future Legislatures into paying them. Here is another fact which appears in the documents which we have. The estimates on which the enlargement of 1846, or thereabouts, was made, assumed that the canals would cost for repairs and superintendence per annum, \$600,000. The actual expenses of superintendence, collection and repairs in 1846 was \$641,000. From that time they varied from \$700,000 to less than \$1,100,000, down to the year 1865, when they jumped up to \$1,927,000, and last year the amount was \$1,435,000. So that during 1865 and 1866, when it was estimated that the cost of superintendence, collection and repairs would be \$1,200,000, the actual expense was over \$3,250,000—almost treble the amount of the estimate. Now I would like to look a little at the profits of some of the canals for the last twenty years. The aggregate amount of tolls received from the Genesee Valley canal for the last twenty years is \$533,000. But it is also stated that by reason of the existence of the Genesee Valley canal, there has been an augmentation of the revenues of the Erie canal to the amount of \$576,000. I do not see the justice of that mode of computation. I insist that the revenues of the Erie canal from the region penetrated by the Genesee Valley canal would be very nearly as great if that canal had not been built. People would have to send their produce to market, and it would reach market through the Erie canal. However, that mode of estimate, as proposed, received the high sanction of the gentleman from Ontario [Mr. Folger], who moved the amendment to my original resolution; and I will say no more on that, except this: that, estimating what the State has received in tolls from the Genesee Valley canal for the last twenty years, and estimating all that the Erie canal has received from tolls on freight that has come from the Genesee Valley canal, the total revenues of the State from those two sources have only been \$1,109,000, while the cost of running the canal has been \$1,346,000, making a net loss to the State, during the last twenty years, of \$236,000. But that, by no means, is the worst aspect of the case; for while the expenses have been enormously increasing on the Genesee Valley canal, the revenues have diminished. During the last three years the tolls collected on the Genesee Valley canal have amounted to only \$64,000, during which time it has added to the receipts of the Erie canal \$42,000, making a total, according to this mode of computation, of \$106,000 receipts to the State, from this canal, within three years. But during that time, the expense of keeping up this canal has been \$522,000, so that beyond all the money received from this canal, and from the Erie canal, on account of the Genesee Valley canal, there has been an actual dead loss to the people, in three years, of \$415,000, besides interest. In other words, we collect one dollar of tolls from the Genesee Valley canal and pay out five dollars. Apart from the total cost of making that canal, I

submit, Mr. President, that it is right we should have these documents in such a form that we can determine whether the people ought to continue this ruinous and losing business forever, or whether there shall not come some time, when the Genesee Valley canal shall cease to call upon the people of this State for more than \$100,000 per annum, for the mere cost of keeping it up, apart from the very large sum stated in this outside document of \$11,000,000 which the canal has actually cost them, up to this time. I wish this document to take that form, so that we can have the debt and credit of each canal, and know precisely what they have cost. The Commissioners seem to understand very well what it is that we want, although they think I do not know how to state the matter. I wish a statement like this. We will say, for instance, that the State pays out \$20,000,000 from 1842 to 1862, on the canals, and in that time it gets back \$20,000,000; but in the mean time the State has lost the interest on this outlay, admitting that the whole sum paid out has been paid back. But instead of that, the Commissioners, in their communication, favor us with this statement:

"As an additional reason for this conclusion, it may be stated that the records from which the information sought for must be derived, are not in the possession of the Commissioners, or under their control. By the act, chapter 162, Laws of 1848, creating the office of Auditor, that officer was invested with some of the most important powers that had previously been exercised by the Commissioners of the Canal Fund, from the organization of the Board in 1817."

Mr. President, the distinguished gentleman from Orleans [Mr. Church], who has been both Comptroller and Lieutenant Governor of this State, and in both capacities a member of the Canal Board, if not one of the Commissioners of the Canal Fund, suggested that this resolution should be addressed to the Commissioners of the Canal Fund, as a body which includes all the persons from whom the information might be obtained. The Comptroller of the State is one of the Commissioners, and the Auditor of the Canal Department is the Secretary of the Commissioners, and as their Secretary, would of course be ready to bring up any book or paper on the order of his superiors, the Commissioners. The Commissioners meet in the State Hall, where the Comptroller occupies a room, adjoining which is the room of the Canal Auditor, or at any rate, their rooms are on the same floor, and near together. The Commissioners of the Canal Fund, and the Auditor of the Canal Board, both have their records there, and they could answer our inquiries without difficulty. When we say that we want this information to act upon, in reference to the canals, all they would have to do, would be to say, "Mr. Secretary, will you go to your department and furnish what is required?" I have no doubt that such orders must be given every day to their Secretary when the Commissioners meet, to have such documents produced as will enable them to intelligently determine upon grave questions arising before them. But they report to us that they cannot answer this inquiry, because these documents are not in their posses-

sion, although they are in the possession of their Secretary. They cannot give this condensed, compact and intelligent information which I require, because their Secretary has it. Mr. President, if this answer does not combine evasion and effrontery in a very superior measure, then I totally fail to comprehend its tenor; and in that view I move that this response be returned to the Commissioners of the Canal Fund.

Mr. ALVORD—Mr. President, I leave to the gentleman from Westchester [Mr. Greeley] the whole meed of good taste upon this occasion, of drawing into this discussion an extended oration upon the subject of canals. He has taken this opportunity, and I leave him this opportunity: but I shall endeavor to speak directly to the question which is at issue. Sir, I took the liberty when upon the floor, on this question, the other day, to say to the gentleman from Westchester—as I had the right to say to him, in regard to the affairs of the State as connected with the canals—that his inquiry was in the wrong direction. I also took the liberty to say, as I had the right to say, from the information I had received, that every particle of the inquiry which he had made would be answered in the course of due time, under the requisition of the Legislature preceding us here. Now, sir, so far as regards this question, permit me again to say that it is true that the gentleman from Orleans [Mr. Church] stood up in his place here on this floor, and said it would be better to change the original direction of the enquiry of the gentleman from Westchester [Mr. Greeley] from the Comptroller to the Commissioners of the Canal Fund. I am sorry that gentleman is not now in his place, but I have authority to say that he himself has since stated that he was mistaken in what he said, and under the circumstances he took the advice of members of this Convention, whether he should not move a reconsideration of that reference in order to direct the inquiry as it should have been, to the Auditor of the Canal Department. So much, sir, as regards the position assumed by the gentleman from Westchester [Mr. Greeley] in reference to the gentleman from Orleans [Mr. Church]. Now, sir, another thing. The statute in regard to this matter is peremptory. All of the books, papers and documents relating to the financial matters connected with the canals, are transferred, by the law of 1848, to the Auditor and he has the entire control and custody of them, and only by courtesy can the Comptroller, or the Commissioners of the Canal Fund enter his department for the purpose of getting this information. He, sir, it is true, occupies also, the position of Secretary to the Commissioners of the Canal Fund, but he does not occupy that simply as Auditor, for as Auditor, under the law, he has specific duties to perform, outside of and beyond their jurisdiction. He is also, by virtue of his office, Clerk of the Canal Board, but he is none the less Auditor and is compelled by the law to do and perform the duties which the law gives into his hands. Another thing, sir: the gentleman from Westchester [Mr. Greeley], undertakes to say that we have been three weeks in session, and that he, upon the very first day of the session, asked for this information, and has been again and again told that it was to be laid

upon the table of members. Why, sir, I know the fact, and the gentleman from Westchester [Mr. Greeley], if he would believe his fellow men, can find out the fact by just crossing the distance from here to the State House, that the entire force of the State Department, and an additional force thereto also, have been employed diligently, earnestly and laboriously from the time the Legislature passed that portion of the act requiring a manual to be laid upon our tables here, in the furtherance of the performance of that duty. They have, sir, worked diligently and well, as I have said. They have looked at all these questions in the various lights and phases in which they could look at them, and they are about to put upon our tables—and were originally intending so to do, and are working in that direction—each and every item of information which is asked for by the gentleman from Westchester [Mr. Greeley], in his original proposition, and by the amendments connected herewith; and they would have done so without any regard whatever to the resolutions. I am at liberty to say and to state distinctly here, so far as the matter is concerned, they are working with the utmost rapidity to that end. And if the gentleman from Westchester [Mr. Greeley] had even been right when he called for this information, and he was entitled to it from the source from which he had called for it, the labor necessary to respond to the inquiry, would have compelled them to work beyond the present time in which we are now speaking, and then they would have been unable to have done it accurately and correctly as required by the resolution. Now sir, the Comptroller of this State, the Secretary of State of this State, the Attorney-General of this State, and the Treasurer of this State, are—together with the Lieutenant-Governor of this State—Commissioners of the Canal Fund. They have received this resolution respectfully; they have treated it respectfully; they have respectfully said to this Convention, that they would gladly give them this information; and when the proviso says, if the information is in the Manual, they may forego the giving it into the hands of the Convention as a separate and distinct matter, they answer you in terms, that the Manual is to contain this information; and they say what is entirely proper, not by way of insult, not standing upon their dignity, because of attempting to take them out of the province in which they move; but by the way of information to the Convention, for its future action, that if they desire any future and other information with regard to this matter, they can get it more readily, more speedily, more easily and more satisfactorily by going to the head of the department, in whose custody the information is, and asking him the question, rather than by sending to a body who has it not, honestly and under the law, in its control, and asking them to deal it out second-handed to this Convention, they getting it from the source from which this Convention can receive the information. In regard to the question, of the results of the canals to revenue and finances of the State, I take it, that the proper time will come to speak with regard to that; but that time, in my judgment, has not arrived. It is



better to wait, as we are waiting in these various cases, for the reports of committees. When they shall have examined these things critically and carefully, from one end to the other, and when shall they bring them up in the body of this house, and we take them up in parliamentary order, in Committee of the Whole, I shall be very happy to cross lances with the gentleman from Westchester, [Mr. Greeley], if we shall disagree, or to march arm in arm with him (I hope not either of us weeping) on to the result of the Convention's labors.

Mr. SCHOONMAKER—I desire to say a word with regard to the propriety of the original reference to the Commissioners of the Canal Fund and the propriety of returning this communication to them. I do not desire to enter into the general discussion. The gentleman from Westchester [Mr. Greeley] moved to return this report to the Commissioners of the Canal Fund, because they have referred the Convention to the Auditor. That question of the status of the Auditor has been a matter of discussion and decision in the Court of Appeals. Some years ago the Auditor refused to pay a draft drawn upon him by the Canal Commissioners, on the ground that there was no authority of law for drawing the draft on him. The Auditor refused to pay the draft, and the Supreme Court granted a mandamus to compel him to pay. It was first granted at the Special Term, and an appeal was taken to the General Term, and the order for mandamus was affirmed. The Auditor then took the appeal to the Court of Appeals, and the question of the status of the Auditor and the authority of the Auditor came directly in question before that court. I quote the language of the court in the case as reported in 13 N. Y. Reports, p. 241.

"GARDINER, Ch. J. The demurrer was sustained and a peremptory mandamus awarded upon the grounds insisted upon by the relator, first: That the powers of the Auditor are strictly ministerial; that the draft being in the proper form, he had no discretion in the premises, but was bound to issue his warrant for its payment without the right to inquire as to the authority of the commissioner, or to act upon his own knowledge, that that officer, in making the draft, had transcended his powers. And secondly, upon the ground that the facts alleged in the return were insufficient to establish a want of jurisdiction in the commissioner.

In 1848 the Legislature provided for the appointment of an Auditor of the Canal Department, and transferred to him the powers, and imposed upon him the duties in relation to the canals originally exercised and devolved upon the Comptroller, with a single exception. [Laws of 1848, 271, § 1, 2.] It was the duty of the Comptroller, prior to the passage of this law, to superintend the fiscal concerns of the State; to draw warrants on the Treasurer for the payment of all moneys directed by law to be paid out of the treasury; but no warrant could be drawn unless authorized by law, and every warrant must refer to the law under which it was drawn. He was to countersign and enter all checks drawn by the Treasurer, and all receipts for money paid to the Treasurer; and no such receipts were evidence of payment

unless so countersigned. [1 R. S., 170, § 1, subd. 9, § 4.]

"In giving a construction to these provisions we are not embarrassed by consideration of the official rank of the parties whose views may chance to differ in respect to their respective rights and obligations. The Comptroller is, in official station at least, the equal of a Canal Commissioner."

The opinion then goes on at some length to show the authority of the Auditor in such cases, and then says:

"The same duty is imposed upon the Auditor by the law of 1848, not only in general terms, but the language of the Revised Statutes, above quoted, is copied into the eleventh and twelfth sections of the act. [Laws of 1848, *supra*.] He is Secretary, *ex officio*, of the two Canal Boards; in all other respects, his power in respect to the canals are the same as those formerly vested in the Comptroller. He is the custodian of all papers pertaining to the duties of the boards above mentioned. The Canal Commissioners and their subordinates account to him, the superintendents are to be removed when he is dissatisfied with their accounts, and the payments from the collectors enforced by his warrant, and all moneys from the Canal Fund must be drawn on his warrant, and, as the head of the canal department he reports directly to the Legislature. That an officer, clothed with powers thus extensive and complicated, should differ in opinion with a Canal Commissioner, as to the existence or construction of a law, may be unfortunate, but can hardly be deemed presumptuous."

There, sir, we have a case decided, showing clearly that the Auditor is virtually the head of the canal department.

Mr. CONGER—Without undertaking to question what the effect and purport of the decision of the Court of Appeals was in that case; it is still very clear that the question there was not one between the Auditor and the Commissioners of the Canal Fund, but was between the Auditor and the Comptroller, who is the financial officer of the State, vested with certain powers under the law of 1848, to take charge of the canals, draw drafts and the like. It is well understood, that while the Constitution intended that the custody of the Canal Funds, as such, should be devolved upon the body designated in the Constitution as the Commissioners of the Canal Fund; yet there was a modification of the Constitution which gave to the Legislature the power to prescribe the duty of all these several officers, and it is well known that in 1848, on a strenuous effort being made, the whole fiscal power with regard to the canals, was transferred from the Comptroller to the Auditor, who had heretofore been the clerk. I beg leave to draw the attention of the gentleman from Ulster [Mr. Schoonmaker], to that provision of law which has not been repealed, and which does not gainsay or come within the purview of that decision, he has just read. That section of the law is as follows:

§ 27. "As soon as possible after the close of each fiscal year, the said Auditor shall submit to the Commissioners of the Canal Fund, a statement of the receipts and payments on account of the



canals and the canal debt, and the balances of the funds on hand, the depositories of the same, and the conditions thereof, which statement shall accompany the annual report of the said Commissioners to the Legislature."

It is very clear, sir, whatever the duties of the Auditor were with regard to preparing any of the business, they were to be submitted as a part of the report of the Commissioners of the Canal Fund to the Legislature, and therefore I think that my associate from Westchester [Mr. Greeley] was right in seeking to get the information he wanted from the Commissioners of the Canal Fund, and I think that the gentleman from Orleans [Mr. Church], who is now absent, was right when he moved to amend the original resolution, so that the information should come from the proper custodians of that information. It is true, the Auditor might furnish it to them; but as they are responsible by law to the Legislature, for the transmission of that information; so I contend, under the Constitution which is now operative, we are to regard the Commissioners of the Canal Fund as the sole depositories of that information, and we have a right to call upon them; and I do not think it is very fair, that they should undertake to put off the information and ask us to wait until the Auditor reports. I think it is right and proper that that Board should have obtained the information called for by the resolution of the gentleman from Westchester [Mr. Greeley], or to have referred it to us. I am not prepared to go as far as the gentleman from Westchester [Mr. Greeley] does, in saying that the Commissioners of the Canal Fund are guilty of evasion and effrontery to this Convention in not responding, because there is an admitted difficulty, owing to the conflict of powers, generated by the law of 1848. I am willing, if the gentleman from Westchester [Mr. Greeley] will consent to modify his proposition in this way, that the report be referred back to the Commissioners of the Canal Fund, with the request that at an early day as practicable they will furnish directly to this Convention all the statistics required in the resolution, to go for it.

Mr. ALVORD—Will the gentleman allow me to interrupt him for a single moment?

Mr. CONGER—Certainly.

Mr. ALVORD—My best recollection about this matter, and I think I am not mistaken, is that since that date, this very law which the gentleman last quoted here, has been altered, in requiring that duty to be performed by the Auditor, and that the Commissioners do not now report to the Legislature.

Mr. CONGER—I still think the gentleman is in error. Why, in the last edition of the Revised Statutes, should that provision stand as unrepealed, unless the repeal has taken place within a very few years, or within the last year. On the contrary, I think the honorable gentleman from Onondaga [Mr. Alvord] will admit, that every report submitted to the Legislature for the last few years, as presented by the Commissioners of the Canal Fund, has contained this very information—compiled, it may be, by the Auditor. Now, Mr. President, I am not disposed to stickle about the

peculiar functionary who is to give us this information. The Constitution says the Commissioners of the Canal Fund; the law says the Commissioners of the Canal Fund. This is not, as I said before, a conflict between the Auditor and the Comptroller, or a conflict to be settled by the law of 1848, but it is a conflict now, here on this floor, whether we shall supersede the functions recognized by the Constitution and the law, as inherent in the Commissioners of the Canal Fund, and set them aside and ask this information from the Auditor. I certainly hope, whatever may be done as to the obtaining of the information sought for at an early date, we will not, in the face of all these facts and the authority I have quoted (and which I think settles the question beyond a peradventure or a doubt), undertake to say we will recognize the Auditor as the only person who can give us the proper information, as to the whole history of the debt, resources and expenditures of the canal fund.

The PRESIDENT—Does the Chair understand the gentleman from Rockland [Mr. Conger], to propose an amendment?

Mr. CONGER—I will, with the permission of the gentleman from Westchester [Mr. Greeley], and if he will accept the modification, I move to amend as follows: "That the report be returned to the Commissioners of the Canal Fund, with the request that at an early a day as possible, they furnish directly to this Convention, all the statistics called for."

Mr. GREELEY—I will accept that amendment.

Mr. SCHOONMAKER—I think the gentleman from Rockland [Mr. Conger] will find, by referring to the law of 1861, that the financial reports which were formerly made by the Auditor to the Commissioner of the Canal Fund, are now directed to be made directly to the Legislature, and, I think he will further find, by the law of 1848 (I have not that law at hand), that that self-same law makes the Auditor the custodian of all the papers belonging to the Commissioners of the Canal Fund; and it declares that after the 31st of October, subsequent to the passage of that law, all accounts formerly kept by the Commissioners of the Canal Fund shall be kept by the Auditor when those documents and papers are in his possession, and those accounts are to be kept by him, not as Secretary of the Commissioners of the Canal Fund, but as Auditor. He is simply, *ex officio*, Secretary of the Commissioners of the Canal Fund.

Mr. GREELEY—I move that this subject be laid over until next Tuesday.

The question was then put, on the motion of Mr. Greeley, to postpone, and it was declared carried.

Mr. VEEDER—I offer the following resolution for reference.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Committee on the Right of Suffrage are respectfully requested to consider the propriety of incorporating in the Constitution a provision authorizing the women in this State who now are or hereafter may become citizens thereof, to exercise the elective franchise when they shall have attained the age of twenty-one years,

and generally to enjoy all the rights and privileges of male citizens thereof.

Which was referred to the Committee on the Right of Suffrage.

Mr. COOKE, moved to take up a resolution offered by him on Tuesday last.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the several county clerks in this State be required to furnish to this Convention a statement showing:

1. The aggregate number of days' session of the Circuit Courts and Courts of Oyer and Terminer, in their respective counties during the year 1866.

2. The aggregate number of days' session of the General Term of the Supreme Court in their respective counties in the same year.

3. The whole number of civil actions for libel, slander, assault and battery, and malicious prosecution, tried in such counties respectively, during the same year, and the aggregate amount of the recoveries therein.

4. The number of causes, originating in Justices' Courts, in which the amount in controversy did not exceed fifty dollars, carried to the Supreme Court by appeal during the same year.

Mr. ANDREWS—Mr. President, a resolution embracing inquiries of a similar character to the one which has just been read, was yesterday referred by the Convention to the Committee on the Judiciary, and I suggest that but one inquiry should be made of the various county clerks, embracing all the information required on the several subjects stated and that such a resolution should be prepared by the Judiciary Committee; to that end I would suggest the reference also of this resolution to that committee.

Mr. COOKE—I hope that reference will not be made. The gentlemen from Onondaga [Mr. Andrews] is mistaken with regard to the purport of the resolution offered and referred to the Committee on the Judiciary yesterday. It was for an entirely different purpose from this one. This one calls for certain information which ought to be spread before this Convention; it is information that ought to be in the possession of every member who will be called upon to act upon the question of the re-organization of the judiciary of the State. I have no doubt of the ability of the Committee on the Judiciary to perfect an excellent plan for re-organizing the courts of the State, but yet it is hardly possible that any report they may make will embrace the views of the hundred lawyers of this Convention; and it is probable that whatever report they submit to this Convention will undergo a severe scrutiny and extensive discussion. The information, called for by this resolution, is designed to aid the Convention in determining whether or not the report of the Committee on Judiciary shall be finally adopted, or what plan shall be devised for re-organizing the judiciary. It is true the information obtained will be referred to the Committee on Judiciary, but I claim that the information received should not be confined to the Committee on the Judiciary, but should be laid before the Convention.

The question was then put upon the resolution and it was declared adopted.

Mr. BURRILL—A resolution was offered by

the gentleman from Rensselaer [Mr. Francis], which was referred to the Committee on Cities, in reference to providing a constitutional provision to prevent towns from bonding themselves to build railroads, and I desire to make a motion to reconsider the vote by which that reference was ordered, and to have the resolution referred to the Committee on the Powers and Duties of the Legislature. I ask a unanimous consent, at the present time, to have that motion considered now.

Mr. ALVORD—I think that the parliamentary way to reach what the gentleman [Mr. Burrill] desires, would be to move to discharge the Committee on Cities from the further consideration of the resolution, and that it be referred to the Committee on the Powers and Duties of the Legislature.

Mr. WEED—I understand that the resolution referred to was not referred to the Committee on Cities, but to the Committee on Towns and Counties.

Mr. FRANCIS—The resolution was referred to the Committee on Towns, Counties and Villages, and I assent to the motion of the gentleman from New York [Mr. Burrill], that it be referred as he proposed, and I hope the motion will prevail.

The question was then put on the motion of Mr. Burrill to discharge the Committee on Towns and Counties from the further consideration of resolution referred to, and to refer it to the Committee on the Powers and Duties of the Legislature, and it was declared carried.

Mr. ROBERTSON offered the following resolution:

*Resolved*, That the Committee on the Preamble and Bill of Rights be requested to inquire into and report upon the expediency of amending article six, section one of the Constitution, by excepting from the exemption of an accused person from testifying, against himself—cases in which he shall be offered as a witness on his own behalf.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. SMITH—I desire to call up the resolution offered by myself on Wednesday in relation to the disfranchisement of persons who sell their votes.

The PRESIDENT—The Chair is informed that the resolution referred to by the gentleman was lost, and the motion should be rather to reconsider the vote by which it was lost.

The resolution was then read, as follows:

*Resolved*, That the Committee on the Right of Suffrage and qualifications to hold office, be instructed to inquire into the expediency of reporting a constitutional provision permanently excluding from the rights of the elective franchise all persons who may be convicted by a court of record of having received money or other valuable thing, to influence or reward their vote, and to make the offense, with or without such conviction, a cause of challenge and disfranchisement at the polls.

Also the pending amendment of Mr. Seaver, to insert after the words "having received," the words "or who have paid or offered to pay."

The PRESIDENT announced the question to be on the motion to reconsider.

Mr. FIELD—I rise to a point of order, that a motion to reconsider cannot be considered without one day's notice.

The PRESIDENT—The Chair is informed that the motion was made some days since.

Mr. SMITH—I do not desire to discuss the question involved in this resolution to-day. I desire simply to state, my object in offering it is to get it before the proper committee so that their attention shall be called to the evil aimed at by that resolution, and the committee have it for their consideration, and to have them report upon it. I believe there is no question that will come before this body for its consideration more important than the question of the purity of the elective franchise, and providing some remedy for the grave evil that now exists. Therefore, it is, that I desire that the committees shall have this question before them for consideration, and at a proper time to submit a report, to enable the subject to be discussed before this body.

The question was then put on the motion to reconsider, and it was declared carried.

The question then recurred on the adoption of the resolution.

The PRESIDENT—Did the Chair understand the gentleman from Fulton [Mr. Smith] to have accepted the amendment proposed by the gentleman from Franklin [Mr. Seaver].

Mr. SMITH—I did not. The resolution as printed is not as it was written and read.

The PRESIDENT—Then the question will recur on the amendment of the gentleman from Franklin [Mr. Seaver].

Mr. VERPLANCK—I desire to further amend by striking out the words "with or without such conviction."

Mr. MERRITT—I move that the resolution with the amendments be referred to the Committee on the Right of Suffrage without further action of this body.

Mr. SMITH—I hope that the amendment of the gentleman from Erie [Mr. Verplanck], will not prevail. The resolution proposes this inquiry for the consideration of the committee—whether upon conviction in a court of record, a person who sells his vote shall not be permanently disfranchised. The last clause of the resolution proposes this inquiry—whether it shall not be made a cause of challenge at the polls whether a person offering his vote has in fact trafficked in the elective franchise, and if it shall be determined on that occasion by the proper officers and inspectors of the election that he has sold his vote or received a reward for it whether he shall be disfranchised on that occasion, whether he has or has not been convicted. The object is to have an inquiry and examination on the part of an able committee of this body into this subject, and I hope they may have the whole matter before them without being restricted by any vote at present.

The PRESIDENT—Will the gentleman from St. Lawrence [Mr. Merritt] state his motion.

Mr. MERRITT—I move that the original resolution, with the pending amendments, be referred to the Committee on the Right of Suffrage.

The question was put on the motion of Mr. Merritt, and it was declared carried.

Mr. BICKFORD—I wish to call up a resolution offered by me and laid on the table, and which will be found on page ninety-four of the journal, allowing native born male citizens of this State, between the ages of eighteen and twenty-one years to vote.

The SECRETARY read the resolution in words as follows:

*Resolved*, That Committee No. 4 on the Right of Suffrage, be instructed to inquire and report as to the expediency and propriety of extending the elective franchise to native-born male citizens of this State between the ages of 18 and 21 years.

Mr. BICKFORD—I move to strike out the words "and report."

There being no objection, the resolution was amended as requested by the mover.

Mr. L. W. RUSSELL—The Committee on the Right of Suffrage, have such a resolution before them now.

The question was then put on the resolution of Mr. Bickford, and it was declared adopted.

Mr. FIELD offered the following resolution:

*Resolved*, that it be referred to the Committee on the Organization, etc., of the Legislature, to consider the advisability of providing for the apportionment and election of members of the Legislature, substantially, in the following manner.

1. To divide the State into eight legislative districts; the city and county of New York to constitute one district, the other seven districts to consist of the remaining portion of the State, and to contain, as nearly as practicable, without dividing any county, an equal number of representative inhabitants.

2. Each legislative district, except the district comprising the city and county of New York, to have four senators, to be elected by the electors of the whole district; the first four to be elected at the next senatorial election, and to continue in office respectively, one, two, three and four years, and thereafter, one senator to be elected each year for the term of four years. The district comprised of the city and county of New York, to have such number of senators as its representative population shall entitle it to on the basis or average ratio of representation in the other seven districts; these senators to be elected in a similar manner as those of the other districts; but the full senatorial term in this district to consist of the same number of years as the district has of senators.

3. The members of assembly to be elected for one year. Each legislative district except the first named, to have sixteen members of assembly, and the first named district, a proportionate number, reckoning as in the case of senators.

4. The members of assembly in each legislative district, to be elected by the electors of the whole district, and the election to be conducted in such manner as to enable each party or combination of votes to elect such share of the members elected in the district as it has of the whole vote of the district.

Which was referred to the Committee on the Organization of the Legislature.

Mr. VAN CAMPEN offered the following resolution:

**Resolved**, That the Committee on the Right of Suffrage be requested to inquire into the expediency of extending the right of suffrage to all male Indians of the age of twenty-one years, residing in this State, who are able to read and write in the English language.

Which was referred to the Committee on the Right of Suffrage.

Mr. REYNOLDS offered the following resolution:

**Resolved**, That the Committee on the Powers and Duties of the Legislature, not otherwise referred be requested to inquire into the expediency of so amending the Constitution, as to prohibit the legislature from passing any law, conferring power upon the constituted authorities of any of the counties, towns, cities, or villages of this State, to borrow money by the issue of bonds, or otherwise, or to contract debts in their corporate capacity, without first having obtained the requisite power therefor, from the popular vote of the communities to be affected thereby.

Which was referred to the Committee on the Powers and the Duties of the Legislature not otherwise referred.

Mr. HARRIS—Some ten days ago I offered a resolution calling for information in regard to the business of the Court of Appeals. It went over at the request of some gentlemen, and I now ask for its consideration.

The SECRETARY proceeded to read the resolution as follows:

**Resolved**, That the Clerk of the Court of Appeals be requested to furnish this Convention with a statement of the number of appeals now pending in that court, distinguishing the years in which, and the districts from which, such appeals were brought. Also the number of cases which were determined by the Court of Appeals during the years 1862, 1863, 1864, 1865 and 1866, respectively.

Also the amendment by Mr. Robertson, by adding the following:

"And also the amount involved in each case where the matter in dispute be a sum of money."

Mr. ROBERTSON—I would state that the Clerk of the Court of Appeals has informed me that the examination suggested by my amendment would require so much time and labor that it would be hardly worth while to delay the inquiry to pursue it in the direction suggested by my amendment although germane to the subject of the resolution. I therefore withdraw my amendment.

Mr. BARKER offered the following amendment:

After the word "brought," the words "and from what court the appeal was taken."

Mr. HARRIS—I accept the amendment.

Mr. PAIGE—Mr. Kernan proposed an amendment to the same resolution, if I recollect right.

Mr. HARRIS—Mr. Kernan's amendment was accepted, and is incorporated in the resolution.

Mr. RUMSEY offered the following amendment:

"And that he includes therein the number of cases decided by said court in each of the said years, which were entitled to a preference under the existing laws."

Which was carried.

The question then recurred on the resolution as amended, and it was declared adopted.

Mr. PAIGE offered the following resolution:

**Resolved**, That Committee No. 4, on the Right of Suffrage and the Qualification to hold Office, be instructed to inquire into the expediency of amending the Constitution by providing that every person elected to fill an elective office, shall, before he takes the oath of office, or enters upon the discharge of its duties, take an oath that he has not directly or indirectly paid or advanced any money or property to promote his election to such office, or agreed to do so; and that on his refusal or omission to take such oath, his election to such office shall be void; and that in case such candidate shall be convicted of, directly or indirectly advancing or paying after he shall have entered upon the discharge of the duties of such office, or after he shall have taken the oath last above mentioned to any person or persons, any money or property, as a payment to such person or persons, or indemnification for advancing money or property to promote his election to such office, such candidate shall forfeit such office, or the right to hold the same.

Which was referred to the Committee on the Right of Suffrage.

Mr. MERRITT moved that the Convention do now adjourn.

Mr. SEAVER—I hope that the gentleman will withdraw the motion to allow me to offer a resolution of importance at this time.

Mr. MERRITT withdrew the motion.

Mr. SEAVER submitted the following report:

The Committee on Printing to which was referred the following resolution, viz:

On motion of Mr. McDonald.

**Resolved**, That this Convention hereby order eight hundred copies of the debates to be printed, and that it be referred to the Committee on Printing to report as to the proper disposition of the same.

Respectfully recommend the adoption of the said resolution, and submits the following:

**Resolved**, That one copy of the debates be placed upon the files by the Sergeant-at-Arms.

The committee ask permission to make a further report as to the disposition of the remaining copies of the debates at some future day.

J. J. SEAVER, *Chairman*.

There being no objection made the Chair announced that the resolution would be considered now.

Mr. CONGER moved that the resolution lie on the table until the Convention take up the resolution on the same subject moved by Mr. Field.

Which was lost.

The question recurred on the resolution reported by the Committee on Printing, and it was declared adopted.

Mr. AXTELL—I offer the following resolution and ask its reference to the Committee on the Right of Suffrage.

Before the resolution was read, on motion of Mr. Merritt, the Convention adjourned to Monday evening, at half-past seven o'clock.



MONDAY, JUNE 24.

The Convention met at 7½ o'clock P. M., pursuant to adjournment.

Prayer was offered by Rev. E. P. WADHAMS.

The SECRETARY read the Journal of Friday, and there being no objection thereto, it was declared approved.

Mr. S. TOWNSEND offered the following resolution:

*Resolved*, That to Committees Nov. 13 and 14 jointly, be referred the question of the policy of interdicting by constitutional provision, the establishment of any corporation, association or other organization, having the leading features of corporations, within this State—without permission of the Legislature.

Which was referred to the Committee on Banking and Insurance, and to the Committee on Corporations other than municipal etc.

Mr. BELL offered the following resolution:

*Resolved*, That it be referred to the Committee on the Finances of the State, Taxation, etc., and the Powers and Duties of the Legislature in respect thereto, to examine and report upon the propriety of requiring the Legislature to provide a more uniform and equitable system of assessment and taxation; whereby all property, whether real or personal, liable to taxation, shall be assessed at the just and true value thereof, as estimated in ordinary business transactions.

Also, whether the law, which allows deductions and abatements, on account of indebtedness, to be made from the valuation of personal property, and withholds such deductions from the valuation of real estate, is not unjust in principle, and subject to much abuse in practice.

Which was referred to the Committee on the Finances of the State.

Mr. SPENCER — I desire to call up the resolution offered by me the other day, requesting the Secretary of State to furnish certain information in regard to the Indian tribes of this State.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Secretary of State be requested to communicate to the Convention a statement containing

1. The number and names of the Indian tribes residing or holding lands within this State.

2. The number of Indians belonging to each tribe.

3. The location and quantity of lands held by each tribe, distinguishing, so far as practicable, and as appears by the records of his office, lands held in common, and lands held in severalty.

4. Such agricultural and other industrial statistics as may be conveniently and concisely stated.

Such statement to be prepared from the latest census and other records pertaining to the subject referred to.

The question was then put on the resolution and it was declared adopted.

Mr. OPDYKE offered the following resolution:

*Resolved*, That the Committee on the Right of Suffrage be instructed to consider the propriety of restricting the exercise of that right, after the year 1871, to those who can read and write.

Which was referred to the Committee on the Right of Suffrage.

Mr. A. F. ALLEN offered the following resolution:

*Resolved*, That the Comptroller be requested to report to this Convention the amount of accrued interest remaining unpaid, belonging to the Common School Fund, arising from money loaned, also upon bonds, for lands sold; and the cause why annual interest is not paid. Also, if, in his judgment, any of the bonds for money loaned, or bonds for land sold, are insecurely invested. If so, what amount, and that the amount of each be reported separately.

Which was laid over under the rule.

Mr. BOWEN offered the following resolution:

*Whereas*, A resolution has been adopted, instructing the Committee on Education to inquire into the expediency of inserting a provision into the Constitution, making education compulsory; and

*Whereas*, The perpetuity of our government may depend upon the general diffusion of education and intelligence; yet it is deemed more compatible with our free institutions that the acquisition of education be voluntary on the part of the citizens rather than compulsory; and *therefore*, as forming a powerful incentive to the voluntary acquisition thereof, be it

*Resolved*, That the Committee on the Right of Suffrage and the Qualification to Hold Office, be respectfully requested to inquire into the expediency of recommending a provision of the Constitution, forbidding any person, who, on January 1st, 1870, is not entitled to the right of suffrage, from thereafter exercising such right unless he be able to read and write the English language, and that the Legislature prescribe what evidence of such ability every such elector shall furnish when he offers to vote.

Which was referred to the Committee on the Right of Suffrage.

Mr. BALLARD offered the following resolution:

*Resolved*, That the Committee on the Preamble and Bill of Rights inquire into the expediency of abolishing presentments by grand juries, and of inserting into the Constitution other modes of presentment for the punishment of offenses.

Which was referred to the Committee on the Preamble and the Bill of Rights.

Mr. E. P. BROOKS offered the following resolution:

*Resolved*, That it be referred to the Committee on the Judiciary to inquire and report as to the expediency of providing, by constitutional enactment, a limitation for claims against the State; or providing a general law defining the kind and character of claims, other than which the State shall not be liable; limiting the time in which the same shall be prosecuted; and creating a tribunal to be designated "the Court of Claims," to hear and determine the same.

Which was referred to the Committee on the Judiciary.

Mr. CARPENTER offered the following resolution:

*Resolved*, That it be referred to the Committee on the Right of Suffrage, to consider the propriety of incorporating in the Constitution the proposed amendment to section two of article two, as

recommended by the Legislature of 1853, and published at page 1,262 of the Session Laws for that year.

Which was referred to the Committee on the Right of Suffrage.

Mr. GREELEY offered the following resolution:

*Resolved*, That the State Engineer and Surveyor be requested to report to this Convention the names of all contractors now constructing new work on any of the canals of the State, or on the extension or improvement of any such canals; the number of the sections held by each under his contract; the approximate cost of the work in each section, if completed in accordance with the original terms of the contract; what changes, if any, have been made in any contract; by whom such changes, if any, were recommended, and by what authority the same were finally made; and the approximate cost of each of such sections when completed in accordance with the plans and specifications as amended.

Which was laid over under the rules.

Mr. W. C. BROWN offered the following resolution:

*Resolved*, That the Constitution should contain a provision, in these words, relating to the Court of Appeals:

**SECTION** The Court of Appeals shall continue, and, after the first day of next, shall be composed of the judges then in office elected to that court and five or more in addition, so that the whole number shall be nine. Each shall hold office for life or until arriving at the age of sixty-five years, or until resignation or removal. In case a vacancy occurs during the recess of the Senate, the Governor may fill the vacancy by an appointment which shall terminate at the end of their next session. The Governor cannot create a vacancy by removal nor re-appoint one whom the Senate shall have omitted to confirm.

§ One of the said judges shall be appointed by the Governor with the consent of the Senate as chief judge to hold by the above tenure.

§ A General Term of the Court of Appeals shall be held as soon as practicable after the adoption of this Constitution, upon the call of the chief judge or of a majority of the judges. Afterward, general terms shall be held as the court may prescribe, but not less than four each year. A majority of those in office shall constitute a quorum.

§ The judges shall divide into two or more classes, each of which shall be a co-ordinate court, and shall hold sessions at such time and places as the general term shall appoint; and the chief judge shall divide the calendar equally and in regular succession.

§ The decision of either class shall be the judgment of the court, and decisive as authority; except that, if any judge of any class dissents from his associates, he may certify the case to the general term, where it shall be reviewed with or without further hearing of the parties, as the general term may, by rules or special order direct; and the dissenting judge, with the concurrence of the chief judge, may suspend the execution of the judgment in such cases and on such terms as may be proper, until a final decision can be made.

§ If two classes differ at the same time upon the same question, their decisions shall be conclusive upon the respective cases, unless the Legislature otherwise provide; but the general term shall by resolution expound the law as it shall govern the court in future like cases.

§ By a vote of two successive Legislatures, three additional judges may be added and an additional class formed.

§ Whenever the calendar shall be so reduced as that in the opinion of the court they can perform the whole duty sitting as one body, they shall hold only general terms. Thereafter, no vacancy that occurs shall be filled except that the number shall be kept up to five. But the Legislature may again provide for an increase of the number, and a division into classes as before, if required by an increase of business.

§ The chief judge shall preside upon all trials of impeachments before the Senate, except that when a judge of the court is impeached the president of the Senate shall preside.

§ The Court of Appeals shall appoint their own reporter, clerk, stenographers and such other officers and assistants as the laws may provide to aid them in the discharge of their duties; and all so appointed shall hold at their pleasure.

§ Each judge shall receive a compensation to be provided by law and not diminished during his continuance in the office.

§ In case of the temporary absence of the chief judge, the court may appoint a chief judge for the time of the absence; but the court shall possess no appointing power except as herein provided.

§ The judges shall not hold any other office of public trust; and all votes given for either of them for any other office by the people or the Legislature shall be void.

§ The Court of Appeals shall have only an appellate jurisdiction from the judgments, decrees and orders of the Supreme Court, and such other courts, and in such cases, as the Legislature may prescribe. But all laws relative to that court remain in force until the Legislature shall otherwise order.

Which was referred to the Committee on the Judiciary.

Mr. OPDYDE offered the following resolution:

*Resolved*, That a select committee of five be appointed to consider the practicability of suppressing official corruption, by means of constitutional provisions, with instruction to report to the Convention.

Mr. OPDYKE — Mr. President, as some objections have been raised in the Convention against appointing special committees, I desire, if in order, briefly to state my reasons for asking for this committee. I believe that no one doubts that an immense deal of corruption exists in this State, and no one can deny that it is a most serious evil. In my judgment it is the most malignant and dangerous malady, that has ever seized upon the body politic; it pervades all departments of government and is rapidly obtaining the mastery over the incumbents of office. Whenever it gains that supremacy it converts the government into, not an instrument of good, but an engine of evil. Nor is this all — dishonest

acts on the part of those occupying high official position and places of honor and trust, necessarily exercise a most pernicious influence upon the community and are rapidly demoralizing the masses of the people. Unless something can be done to arrest this tendency, there is serious danger that it will ultimately get the mastery over our whole system of government, or at least make it a by-word and a reproach among the nations. Unless this Convention can do something to arrest this tendency, I, for one, feel that our labors here will be of little value to the State. No matter how wisely or how skilfully we may construct our political institutions, unless we can secure honesty and fidelity in their administration, we cannot hope they will produce good government. Mr. President it is in the hope and I may add, in the confident belief that we may do something to mitigate this evil, that I ask for this committee. I think no member of the Convention can object, at least to have the effort made. Some one has objected to the increase of special committees, in general, on the ground, that we have standing committees whose duty it is, to consider every proposition that may come before this Convention, but I think the objection will not lie in this case. Standing committees have been appointed to consider specific articles or provisions of the Constitution, but the subject-matter of this inquiry pervades every department of government; it is as broad as the Constitution itself, and therefore not a fit subject to be referred to any one of the standing committees. In a word, its nature and its high importance, alike bespeak for it a special reference, and I trust the Convention will not hesitate to accord it.

Mr. HARRIS—I prefer, Mr. President, that this resolution should lie over until there are more members of the Convention present.

The PRESIDENT—The resolution giving rise to debate, it will lie over under the rule.

Mr. M. I. TOWNSEND offered the following resolution:

*Resolved*, That it be referred to the Committee on the Preamble and Bill of Rights to inquire into the propriety of amending the sixth section of article first of the Constitution by inserting in said section, after the words "nor shall be compelled in any criminal case to be a witness against himself," the words "except in case of accusations of bribery or attempt to bribe electors or official persons."

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. KINNEY offered the following resolution:

*Whereas*, There is now a law upon our statute books providing for the free education, in our common schools, of all the children of the State, but which law is liable to be repealed by any future Legislature, thus leaving the great cause of universal education, the basis of all free government, at the mercy of the ever-changing Legislatures, therefore,

*Resolved*, That the Committee on Education be respectfully requested to consider the propriety of a constitutional provision requiring the Legislature to provide by law for the free education

by the State of all children between the ages of seven and twenty-one years.

Which was referred to the Committee on Education.

Mr. KRUM offered the following resolution:

*Resolved*, That the Committee on the Right of Suffrage and Qualifications to hold Office be instructed to inquire into the expediency of reporting a constitutional provision or provisions embodying in substance the following:

1. Forever disfranchising any and all persons who shall be convicted by a court of competent jurisdiction of having either directly or indirectly received or offered to receive any money or other valuable thing to influence or reward their vote or votes.

2. Forever disfranchising any and all persons who shall be convicted by a like court of paying or offering to pay either directly or indirectly to any person or persons, any money or other valuable thing for the purpose of influencing or rewarding any particular vote or votes.

3. Making all such persons competent and compellable witnesses against each other, with a proviso that the evidence of neither shall be used against himself.

4. Making such offense, either with or without conviction, a good cause of challenge at the polls.

Which was referred to the Committee on the Right of Suffrage.

Mr. SPENCER offered the following resolution:

*Resolved*, That the Committee on the Judiciary be instructed to inquire into the expediency of substituting for article 6 of the present Constitution the following:

#### ARTICLE VI.

SECTION 1. The assembly shall have the power of impeaching all civil officers of this State, for mal and corrupt conduct in office, and for high crimes and misdemeanors: but a majority of all the members elected shall concur in an impeachment.

§ 2. The tribunal for the trial of impeachments shall be composed of the president of the Senate, the senators, or the major part of them, and the judges of the Supreme Court, or the major part of them. On the trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the tribunal. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office under the State; but the party impeached shall be liable to indictment and punishment according to law.

#### ARTICLE VII.

SECTION 1. The judicial power shall be vested in a Supreme Court, Superior Courts, courts of oyer and terminer, county courts, courts of sessions, surrogates, justices of the peace, and in such other courts and offices, and with such powers and jurisdictions, as the legislature may, from time to time, establish and determine.

§ 2. The Supreme Court shall be composed of a chief justice and his associate justices.

§ 3. In case there shall at any time be, such an accumulation of business in the Supreme Court, that the same cannot be disposed of speedily and promptly, and the fact of such accumulation shall be duly certified by the court to the Governor, he shall, prior to the final adjournment of the Legislature, after being so certified, by and with the advice and consent of the Senate, appoint six commissioners with power to hear and determine such cases pending in said court, as shall by said court be assigned for the purpose. Such commissioners to hold their office for not less than one year, and until they shall have disposed of the business so assigned, and have the same compensation as justices of the Supreme Court.

§ 4. There shall be twenty-four judges of the Superior Courts, which number may be increased from time to time, as the Legislature may by law determine.

§ 5. The chief justices, and justices of the Supreme Court, and judges of the Superior Court shall be appointed by the Governor, by and with the advice and consent of the Senate, shall hold their office during good behavior, and receive at stated times, a compensation for their services, to be determined by law, and which shall not be diminished during their continuance in office. They shall not hold any other office or public trust, nor exercise any power of appointment to public office.

§ 6. Judges of the county courts, and courts of sessions and surrogates, shall be chosen by the electors of their respective counties and shall respectively hold their office for five years. They shall respectively receive for their services, such compensation as shall be determined by the boards of supervisors of their respective counties, to be paid out of the county treasury. The board of supervisors of any county, may by resolution, a copy whereof shall be filed in the office of the Secretary of State, determine that the county judge shall perform the duties of surrogate, and in such case no surrogate shall be elected for such county.

§ 6. Justices of the peace shall be chosen by the electors of their respective towns, as may be provided by law.

§ 7. The chief justice, and justices of the Supreme Court and judges of the Superior Courts, may be removed by the concurrent resolution of both houses of the legislature, if two-thirds of the members of assembly elected, and a majority of the senators elected, concur therein. All judicial officers except those mentioned in this section, and except justices of the peace, and justices and judges of inferior courts, not of record, may be removed by the Senate, on the recommendation of the Governor, but no removal shall be made by virtue of this section, unless the cause thereof shall be entered on the journal, nor unless the party complained of shall have had an opportunity to be heard in his defense. On the question of removal the ayes and noes shall be entered on the journal.

§ 8. All judges and judicial officers whose terms shall not have expired when this article takes effect, shall hold their office during the

terms for which they were respectively elected; but their duties may be transferred to the courts established by this article.

§ 9. All judges and judicial officers whose election or appointment is not herein provided for, shall be elected or appointed in a manner to be provided by law.

Which was referred to the Committee on the Judiciary.

Mr. EDDY—I move that the resolution offered by the gentleman from Onondaga [Mr. Alvord] to reconsider the resolution offered by the gentleman from Albany [Mr. Harris], to authorize four different committees to employ clerks, be now taken from the table.

The question was then put on the motion of Mr. Eddy, and it was declared lost.

Mr. BALLARD offered the following resolution:

*Resolved*, That the Committee on the Judiciary inquire into the expediency of requiring the Legislature, at its first session after the adoption of the new Constitution, to provide for the appointment of a reporter of the decisions of the Court of Appeals; and, also, a reporter of the decisions of the Supreme Court, and to be denominated "State reporter," with such tenure of office, duties and compensation as the Legislature may prescribe.

Which was referred to the Committee on the Judiciary.

Mr. FOWLER—I move to take from the table the resolution offered by me some days since, in reference to incorporating a provision in the Constitution in reference to prohibiting the Legislature from granting licences to sell spirituous liquors.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That it be referred to the appropriate committee to take into consideration the propriety of reporting an amendment to the Constitution prohibiting the Legislature from passing any law granting, or authorizing the granting, of any license for the sale of spirituous liquors.

The question was put on the motion of Mr. Fowler, and was declared carried.

The resolution was then referred to the Committee on the Powers and Duties of the Legislature.

Mr. KETCHAM offered the following resolution for reference.

*Resolved*, That it be referred to the Committee on the Judiciary to inquire into the propriety of providing by constitutional enactment for the prosecution of claims and demands against the State by any citizen thereof in the established courts of the State.

Which was referred to the Committee on the Judiciary.

Mr. AXTELL offered the following resolution:

*Resolved*, That the Committee on the Judiciary be directed to inquire as to the expediency of establishing a court distinct from the Senate, for the trial of *impeachments*, and report to this Convention.

Which was referred to the Committee on the Judiciary.

Mr. PRINDLE offered the following resolution:

*Resolved*, That it be referred to Committee No 3,



on the Powers and Duties of the Legislature etc., to inquire into the expediency of inserting the following provision in the Constitution:

"The Legislature shall pass no law extending the time for the collection of taxes in particular counties and towns, but laws may be passed, authorizing the Comptroller to grant extension within such limitation as may be prescribed by the Legislature.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. AXTELL offered the following resolution:

*Resolved*, That the following article become a part of the Constitution:

SECTION 1. There shall be one superintendent of State prisons, who shall be appointed by the Governor, by and with the advice and consent of the Senate. He shall hold his office during good behavior, shall have the general supervision of the State prisons, and shall receive an annual salary, to be ascertained by law.

§ 2. The wardens and agents (or chief executive officers) of the several State prisons, shall be appointed by the Governor, by and with the advice and consent of the Senate; and they shall appoint all their subordinate officers, except chaplains, who shall be appointed in the same manner as the wardens.

§ 3. The Legislature may provide for the appointment for the several state prisons, of *local boards of visitors*, with powers and duties to be defined by law.

Which was referred to the Committee on State Prisons.

Mr. BELL offered the following resolution:

*Resolved*, That the Senate Committee charged with the duty of "Inquiring into the management of the canals of this State, the departments thereof" etc., be respectfully requested to furnish this Convention with a copy of the testimony thus far taken on that subject for the information of the committee on canals.

Which laid over under the rules.

On motion of Mr. M. I. TOWNSEND the Convention adjourned.

TUESDAY, JUNE 25.

The Convention met at 11 o'clock A.M.

Prayer was offered by Rev. E. P. WADHAMS.

The Journal of yesterday was read by the Secretary.

Mr. FOWLER—The resolution offered by me yesterday was referred to the Committee on Powers and Duties of the Legislature; it is not so stated in the journal.

The journal was corrected as stated.

There being no further objection the journal was approved.

The PRESIDENT announced the following special committee, called for in the resolution of Mr. Graves, in reference to adulterated liquors, etc.:

Messrs. Graves, Livingston, Ely, Cochran, Landon, Roy, Hand, Verplanck.

The PRESIDENT presented a communication from the Tax Commissioners of the city of New York, in reply to a resolution of the Convention calling for certain information.

The SECRETARY proceeded to read the communication as follows:

OFFICE OF THE COMMISSIONERS OF  
TAXES AND ASSESSMENTS,  
NEW YORK, June 22, 1867.

To the Constitutional Convention of the State of New York:

GENTLEMEN: In accordance with the resolution received by us, requesting a statement to be furnished your honorable body "of the number of tax payers in the city of New York, as the same appears from the records and documents in that office, distinguishing, as far as practicable, between those assessed for real estate and those assessed for personal property," we have caused an examination to be made of the records of the department, and respectfully submit the following statement therefrom:

Number of persons assessed for real estate, 44,153.

Number of persons assessed for personal estate, 11,653.

Number of persons assessed as shareholders of banks, 25,388.

Making an aggregate of 81,194.

J. W. ALLEN,

IRA O. MILLER,

*Commissioners of Taxes and Assessments.*

On motion of Mr. HARRIS, the communication was referred to the Committee on Cities, etc., and ordered to be printed.

Mr. GERRY offered the following resolution:

*Resolved*, That the clerk of the Assembly be requested to furnish this Convention with a list of all the titles of bills introduced at the last session of the Assembly, relating to or affecting the city of New York.

Which was laid over under the rule.

Mr. GROSS offered the following resolution:

WHEREAS, The use of fermented liquors and wines as a beverage is nearly as old as mankind; and

WHEREAS, history has shown that the use of these gifts of nature and products of human industry cannot be successfully interdicted by the enactment of laws; that the cause of public morals and true temperance cannot be promoted by the passage of sumptuary laws; and that the operation of the civil and criminal laws in this respect should be confined to the regulation of the traffic in these commodities, and to the punishment of drunkenness, disorderly conduct, and offenses against decency, and

WHEREAS, it is utterly incompatible with a republican form of government, and with the existence of free institutions, to provide for the regulation of the morals of the people by legislative enactments, or by the organic law of the State, and

WHEREAS, The policy of prohibition and temperance by law, whenever attempted, has proved but an unbearable and short-lived despotism, and produced hypocrites and sly sinners, rather than moral and temperate men, and had a tendency to create disrespect for all laws, and

WHEREAS, the clamor so often advanced to the effect that all fermented liquors and wines are poison, *per se*, and injurious to body and mind, is

neither borne out by experience nor by the teachings of science, but on close and thorough investigation is reduced to the fact that every article of solid or liquid food or drink used by mankind, may injuriously affect the human system if taken to excess, and,

**WHEREAS**, The character of any crime or offence should never be made to depend on the demarcation of town and county lines, therefore

*Resolved*, That the Committee on Cities be instructed to inquire into the policy, expediency and propriety of providing by the organic law, that *regulation* and not *prohibition* of the traffic in fermented liquors and wines, shall be the rule, and that all such general regulations shall be uniform throughout the State, and that the enforcement of the general regulations and the enactment of all special regulations and police regulations, necessary in addition thereto, for the promotion and maintenance of public order, decency, sobriety and morality, shall be reserved to the municipal authorities of the cities and towns of this State.

Which was referred to the Committee on Cities, etc.

Mr. BARNARD offered the following resolution:

*Resolved*, That document No. 12, as now printed, be taken from the file, and destroyed, together with all copies thereof; and that a new edition be printed with the following corrections:

	County.	P. O. Address.
Barnard, Daniel P.,	Kings,	Brooklyn.
Livingston, Walter L.,	do	do
Lowrey, Charles,	do	do
Rolfe, John P.,	do	do

The question was put on the resolution and it was declared adopted.

Mr. DUGANNE offered the following resolution for reference:

*Resolved*, That all claims against the State except canal claims, shall be heard and adjudicated by a board of commissioners of audit, to be appointed by the executive, with the consent of the Senate, with authority to make decisions and awards, for which the State shall issue its bonds, payable in twenty years, with interest not to exceed five per cent, such bonds to be issued by the Comptroller of the State, as for other State liabilities.

Which was referred to the Committee on Finances of the State.

Mr. COLAHAN offered the following resolution:

**WHEREAS**, numerous accidents have occurred of late years upon the railroads and steamboats of this State, resulting invariably in great loss of life, and

**WHEREAS**, such accidents have, in most instances, occurred through the negligence or ignorance of the corporations or companies controlling said railroads and steamboats--and for the reason of the proven inability of the public to receive redress or security from the Legislature of this State and of their ineffectiveness in enforcing the civil remedy now given by statute, against such monetarily powerful and politically influential corporations,

*Resolved*, That a committee of five be appointed

to consider and devise some action to be had by this body, which will hold said corporations or companies to a more strict accountability for their acts, and make them directly amenable for all losses of life and limb sustained by individuals through their neglect or ignorance, action, that will make them mindful of their responsibilities and the obligations they are under to the public at large.

Also, that this committee be empowered and directed to ascertain from the proper sources of information, the number of accidents that have occurred, and the number of losses to life and limb for the ten years last past--and report the same to this Convention.

Which giving rise to debate, was laid over under the rule.

Mr. GREELEY, from the Committee on the Right of Suffrage, offered the following resolution:

*Resolved*, That the use of this hall on Thursday evening of this week, be granted to the Standing Committee on the Right of Suffrage, that they may accord a public hearing to the advocates of female suffrage.

The question was put on the resolution, and it was declared adopted.

Mr. A. J. PARKER offered the following resolution for reference:

*Resolved*, That it be referred to the Committee on the Powers and Duties of the Legislature to inquire into the expediency of so amending the Constitution as to deprive the Legislature of the power to create corporations, except under general laws.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. MERWIN offered the following resolution:

*Resolved*, That in reconstructing the judiciary the following principles should be observed:

1. The Court of Appeals should not be composed of judges of any other court. The judges proper, of the present court, or a like number, should be continued in office, not exceeding six years, until the present calendar is disposed of, and a new Court of Appeals should be constituted of sufficient force to dispose of new business as it may arise.

2. No justice of the Supreme Court should sit in review of any case which shall have been tried before him at circuit or special term, but a distinct class of judges should hold general terms, sufficient in number to dispose of the business, and another class hold circuit and special terms, and the State should be divided into districts sufficient in number and location for the convenient transaction of business.

3. County courts should have a more extended jurisdiction, and in that way relieve as far as may be the Supreme Court.

4. Provision should be made for reforming justices' courts, so that all issues in those courts in civil cases, should be tried by a district justice to be elected in each assembly district.

Which was referred to the Committee on the Judiciary.

Mr. L. W. RUSSELL offered the following resolution:

*Resolved*, That Committee No. 7, on Town and County Officers, be instructed to inquire into the expediency of having town meetings for election

of town officers held on the same day throughout the State, and of reporting an amendment to the Constitution therefor.

Which was referred to the Committee on Towns and Counties.

Mr. ROOT offered the following resolution:

*Resolved*, That the Committee on Canals have power to investigate their management, and to send for persons and papers.

The question was put on the resolution, and it was declared adopted.

Mr. A. LAWRENCE offered the following resolution for reference:

*Resolved*, That it be referred to the Committee on the Right of Suffrage, and the qualification to hold office, to inquire into the expediency of so amending the Constitution, as to require a term of citizenship of at least sixty days, as one of the qualifications of a voter, instead of ten days, as is now required.

Which was referred to the Committee on the Right of Suffrage.

Mr. LANDON offered the following resolution for reference:

*Resolved*, That it be referred to the Committee on the Judiciary to inquire into the expediency of so amending the Constitution as

1. To confer upon the Supreme Court jurisdiction of the various claims against the State commonly known as claims for canal damages.

2. To require the Legislature to define by general laws the liability of the State in respect to such claims, and the manner in which the State may be sued and defended, and judgment enforced in such cases.

3. To prohibit special legislation in such cases.

Which was referred to the Committee on the Judiciary.

Mr. VAN CAMPEN offered the following resolution:

*Resolved*, That the State Engineer and Surveyor be requested to furnish, at his earliest convenience, in a tabular form, from the reports of the railroad companies of the State, from the 30th day of September, 1850, to the 30th day of September, 1866, made in pursuance of section 31 of chap. 140 of the Laws of 1850, for the use of this House of Delegates, the total amount of freight in tons of 2000 lbs. carried over each road; the number of tons carried one mile, with the amount of each kind of freight classified.

Which was laid over under the rule.

Mr. SEAVER offered the following resolution:

*Resolved*, That it be referred to committee No. 2 to inquire and report upon the expediency of providing that no officer of either house of the Legislature shall be paid, or allowed in any form, as compensation for services, any other or greater sum than such as shall be prescribed by law for such service before the election or appointment of such officer.

Which was referred to the Committee on the Organization of the Legislature.

Mr. BICKFORD offered the following resolution:

*Resolved*, That the fee, salary, perquisites and emoluments of any office held under this State, or any county or city thereof shall not exceed six thousand dollars per annum over and above neces-

sary expenses in discharging its duties, and over and above taxation on incomes; the surplus over that sum should be paid into the Treasury of the State; and a Constitutional provision to that effect should be made.

Which was referred to the Committee on the Finances of the State.

Mr. FIELD offered the following resolution, and moved that it be laid on the table:

*Resolved*, That it be referred to the Committee on Corporations, other than municipal, banking and insurance, to consider the expediency of providing in the Constitution that all corporations composed of shareholders be required to so conduct their elections of directors as to enable such number of shares to elect a director, as bears to the whole number of shares represented at the election the same ratio as unity bears to the number of directors to be chosen.

Which was laid on the table.

Mr. FIELD moved that the Committee on the Organization of the Legislature be discharged from the further consideration of the resolution offered by himself, in regard to the apportionment and election of members of the Legislature, and that the resolution lie on the table.

Which was carried.

Mr. DUGANNE offered the following resolution.

*Resolved*, That the committee on canals be instructed to inquire into the nature and character of the dock facilities of the harbor of New York, within the jurisdiction of this State, and the ownership thereof, and to consider the expediency of placing them under like management and control as the canals of the State.

Which was laid on the table.

Mr. BECKWITH offered the following resolution:

*Resolved*, That the Auditor of the Canal Department be and he is hereby requested to furnish to this Convention the following information:

1. The original cost of the Champlain canal.  
2. The cost of any and all enlargements, repairs and improvements thereof.  
3. The tolls received in each fiscal year from 1864 to 1866 inclusive.

4. The cost of collection, superintendence and repairs thereof for each year during the time aforesaid.

5. The tons shipped on the Champlain canal, each year during that time.

Stating the same separately from those of the Erie Canal, so far as practicable.

Which was laid over under the rule.

Mr. BELL offered the following resolution:

*Resolved*, That the superintendent of the Onondaga salt springs be respectfully requested to furnish, for the use of this Convention, the following information in regard to the salt springs and the manufacture of salt:

1. The whole number of salt wells on the "reservation."

2. The number owned and now in use by the State.

3. The quantity of salt, in bushels of 56 pounds each, said wells are capable of producing annually.

4. The least, greatest and average quantity of salt of the different kinds produced therefrom.

5. The annual ratio of increase and diminution of production.

6. The principal causes which operate to produce an increase or diminution in the yearly production of salt.

7. The facilities, such as wells, pumps, reservoirs, aqueducts, machinery, labor, or otherwise, which the State furnishes in the manufacture of salt, showing the share of the cost per barrel, borne by the State, in proportion to the whole expense thereof.

8. The minimum, maximum and average price at which salt has been sold at "the works" during the last twenty years.

9. The present price of salt.

10. The whole number of fine salt manufactories or blocks; and the capacity and value thereof, now on the reservation, and by whom owned.

11. The number of coarse or solar salt vats or covers, by whom owned, and the value thereof.

12. The quantity of salt lands leased, to whom, at what rent, and for what term of time.

Which was laid over under the rule.

Mr. BECKWITH offered the following resolution:

*Resolved*, That it be referred to the Committee No. 9, on Finances, etc., also to the Committee No. 3, on the Powers and Duties of the Legislature to consider upon the necessity and propriety of amending section 9, of article 7, of the present Constitution, so that it shall read "The credit of the State shall not, in any manner, be given or loaned to, or in aid of, any individual association or corporation, nor shall any money or property of the State be in any manner, given, loaned, or appropriated to, or in aid of, any individual association or corporation, or in aid of any religious or sectarian institution, society, association or corporation, that is, or shall be solely and exclusively under the control or management of any religious or sectarian church society, association or corporation."

Which was referred to the Committees on Finance and on the Powers and Duties of the Legislature.

Mr. W. C. BROWN offered the following resolution:

*Resolved*, There should be a constitutional provision to the following effect:

"The credit of the State shall not in any manner be given or loaned to or in aid of any individual association or corporation, nor shall any money belonging to the State, raised or to be raised by taxation, be loaned or given to any individual association or corporation, except that State contributions to public charities, asylums, schools, academies and colleges may be continued annually, but not exceeding the amount appropriated in any year for such purposes prior to 1866."

Which was referred to the Committee on Finance.

Mr. MATTICE offered the following resolution:

*Resolved*, That it be referred to the Committee on Militia and Military Officers, to inquire into the expediency of the following amendments:

1. That provisions be introduced in the Constitution requiring the "active militia," or "national

guard," to be at all times armed and equipped and disciplined in such manner as to make them most efficient for active service.

2. That in time of peace, the Governor shall be authorized to order the National Guard to encamp by brigade or division, for ten days in each year, for military instruction; and that the officers, non-commissioned officers, musicians and privates shall be entitled to such pay and emoluments for each day's service in camp, as the legislature may provide; and regiments shall be furnished transportation by the State, from their head-quarters to camp and return.

3. That whenever the good of the military service may require it, the Governor shall convene boards of the National Guard officers of high rank, to be taken from the action or retired lists, or both, to examine and select for the use of the National Guard the best arms and equipments, camp equipage, means of transportation, ordnance and ordnance stores and other materials of war, and books of instruction; and the same shall be furnished by the State.

4. Officers assigned to duty according to brevet rank shall have the pay and allowance of the full rank.

5. Any National Guard officer who has served continuously in the same grade for ten years may take position upon the retired list, and be exempt from further military duty except when ordered upon detailed duty by the Governor. Officers on the retired list when detailed as members of a board, or otherwise placed temporarily on any important military service by the Governor, shall be entitled, while on such duty, to the same pay and allowances as officers of the same grade in the United States army.

Which was referred to the Committee on Militia and Public Defense.

Mr. VAN CAMPEN offered the following resolution:

*Resolved*, That when this House of Delegates adjourn on Friday next, they adjourn to meet on Tuesday, July 9th, at 11 o'clock A. M.

Mr. BICKFORD—I object to the consideration of the resolution:

The resolution giving rise to debate, it was laid over, under the rule.

Mr. FIELD offered the following resolution:

*Resolved*, That it be referred to the Committee on Printing to consider and report on the subject of the compensation of the stenographer to the Convention.

Which was referred to the Committee on Printing.

Mr. ALVORD—I call up the motion offered by me to reconsider the vote by which the resolution offered by the gentleman from Albany [Mr. Harris], in reference to appointment of clerks to certain committees.

The PRESIDENT announced the question on the motion to reconsider.

Mr. ALVORD—In looking over the proceedings of the Convention of 1846, a Convention which assembled together here for the first time since 1821, for the purpose of re-organizing the Constitution of this State—a Convention which took up the time of some of the then most able men of this State—a Convention which lasted



from its commencement (beginning at the same time of the year that ours begun) until the 8th of the then succeeding October, I find that they had no such thing as a clerk to any of their committees. They were, so far as regarded their officers, limited in the number of them, vastly below that which we have under our organization to-day. I also, sir, from my past experience, even reaching beyond that Constitutional Convention, and very late in the history of this State, find that the Legislature have not, until but a few years previous to the present time, ever employed clerks to their committees. I have had the honor of presiding, as late as the year 1858, as speaker of the House of the Assembly, collected together in this chamber, and there was not at that time such a thing known as a clerk of a committee. There were, under the rules of the House in times gone by, larger duties placed upon committees than have been subsequently, when almost every committee of the House has had a clerk. Reports had to be reduced to writing, and instead of being delivered orally and with slips printed as has been the custom in more modern times, they were laboriously drawn up, giving the facts in each case, brought by the committee to the consideration of the Legislature, and concluded with the reasons for the report of the committee. This was all the labor of the individual members or of the presiding officer of a committee and no reason was found until modern times, why this duty should devolve upon an outside person, to be called a clerk. It seemed to me at the time it was first inaugurated, that it was simply for the purpose of creating offices to be filled by hangers-on around the Legislature. My experience has been, sir, in the few past years in which this practice has obtained, that these men have been the most efficient engines in the employ of the lobby for the purpose of clogging the legislation of the State. But, sir, I trust that in this Constitutional Convention there is by no possibility any necessity whatever for clerks. What do we do, sir? We meet together for the purpose of consultation as committee men; if there are distinct and separate propositions made by any individual member of a committee, they come there in his handwriting; they are drawn up; they are only parts and parcels of our business, and require not to be re-engrossed in any proceedings which we may take, and all that there would be for a clerk ordinarily to do, would be to see that our papers were kept together, and to see that they would be kept in some little order, so far as regarded their precedence, when they are brought before the committee, and when they are being acted upon by the committee, and to keep, and take care of the room in which we as a committee may meet. Now, Sir, I think we have eight door-keepers, men who are employed here during the period of the session, some two or three hours each day; they like us, are under the necessity of being present at these sessions of the Convention; but unlike us, sir (if we do not employ them some other way), they are at liberty the moment the session is dissolved, while we have to go into our respective committee rooms and work laboriously a large portion of the day, outside of our duties here. Now,

it would seem to me, eminently proper, that some three or four, or more, of these doorkeepers should be selected by the presiding officer of this Convention and given to these four great committees to act as custodians of their papers and to see to the regulation and management of their committee room; and to do all that by any possibility is necessary for a clerk to do in the capacity in which we should employ and use a clerk in our committees. I trust, therefore, while we have got together here for the purpose of endeavoring to produce economy in the future administration of the governmental affairs of this State, we shall not inaugurate this system, small though it may appear to be, in favor of a greater diffusion of expenditure and increase in the number of officers. I trust, therefore, the motion to reconsider in this case will prevail.

Mr. EDDY — I have been a silent, though not an uninterested listener to the debates of this Convention thus far, and confess that I am surprised at the course taken in what I consider an unwarranted and unjustifiable expenditure of public money. It is expected, by my constituents at least, that this Convention will set an example in that particular, worthy to be followed by future Legislatures. That the Empire State occupies a prominent position as well as an influential one among her sister States is everywhere admitted; that an odium has been cast upon our legislative body, whether deservedly so or not, for corrupt legislation, is nevertheless true. I, sir, do not envy the position of those delegates, although largely in the majority, who voted in favor of the resolution for the unnecessary and extravagant expenditure for public printing. The measure, sir, as probably the delegates have found, if they have mingled with their constituents, is decidedly unpopular with the people, and now, sir, shall we allow the vote to stand authorizing four additional clerks for this Convention. It is contended that the business of those committees, which these clerks are to serve, is much larger than that of the other committees. If I understand the matter the committees are increased in number in proportion to the business, and there will be sub-committees appointed and the work divided up, so that the work a clerk would do can be arranged and distributed so as not to press heavily on any single member of the committee. Further, if I understand the honorable gentleman, the Chairman of the Judiciary Committee [Mr. Folger] whose duties are probably more laborious than any other; he himself is opposed to the measure. I hope the motion to reconsider will prevail, and when the vote is taken, the yeas and nays will be called.

Mr. AXTELL — I rise to a question of privilege. The gentleman who has just sat down said, "I do not envy the action of the majority of those men who the other day voted for an unwarranted and unnecessary expenditure of the public money." I should say this is a breach of privilege of this house.

The PRESIDENT — What remedy does the gentleman propose?

Mr. AXTELL — I propose no remedy.

The PRESIDENT — The Chair suggests none.

Mr. SEYMOUR—I call for the reading of the resolution in regard to which it is proposed to reconsider the vote on its adoption.

The SECRETARY, then proceeded to read the resolution as follows:

*Resolved*, That the Committee on the Judiciary, Finance, Canals and Cities, each be authorized to employ a clerk for their respective committees.

Mr. L. W. RUSSELL—I find rule 32 says: "All resolutions authorizing or contemplating expenditures for the purposes of the Convention, shall be referred to the standing Committee on Contingent Expenses, for their report thereon, before final action by the Convention." I think this is a matter that ought to go to that committee.

The PRESIDENT—The Chair is of opinion that this resolution was originally introduced before the rules were adopted, and if so, this rule would hardly attach.

Mr. L. W. RUSSELL—I shall vote for the motion to reconsider in that case.

Mr. HARRIS—I have no very great anxiety that the resolution which has been adopted, and the vote on which is now moved to be reconsidered, should be made a permanent order of this body. I had supposed when I offered the resolution that it was a thing that would commend itself to the judgment of this Convention. There are four large committees, consisting of fifteen members each; they are charged with very important and responsible duties. Now, every gentleman who is at all experienced in such proceedings knows that there is a great deal of mechanical labor—what may be called drudgery, that somebody must perform. Now, sir, I have been accustomed to labor all my life; I have had the honor of being assigned to the head of one of these important committees; I can do as much work as any other man on that committee or any other committee; and if the Convention feel and are of the opinion that I ought to perform this drudgery, this mechanical labor, which I had proposed to assign to the clerk, I shall submit to it, and submit to it cheerfully. It seems to me it will be an economy of time—an economy of labor to allow this kind of mechanical work, which we all know must be performed in these large committees, to be performed by a clerk. I should be glad to have a clerk to the committee to which I belong, but if the Convention judges otherwise, I will try to get along as well as other gentlemen here.

Mr. ALVORD called for the ayes and noes, and a sufficient number seconding the call, they were ordered.

Mr. PRINDLE—It seems to me, Mr. President, this resolution is entirely proper, and one which ought to have been adopted by this body, notwithstanding all we have heard said against it, and notwithstanding all that has been thrown out in regard to members of this Convention who voted for it and who also voted for the printing of the debates. So far as the power of the Convention is concerned to pass such a resolution, I think there can be no question about it. It seems to me that the Legislature, even if they intended so to do, had no authority whatever to restrict this body in regard to its necessary expenses. We are not here by virtue of the act of the Legislature alone, but we are here by the authority of

the Constitution of the State of New York, and by the authority of a vote of the people of the State of New York. The Constitution prescribes this, and prescribes that the Legislature shall provide by a law, for the election of delegates to such Convention. It was the business of the Legislature simply to pass an enabling act, and it had no power to restrict this Convention. Suppose, sir, they had made no appropriation to pay the expenses of this Convention at all, would we have no right to act here? Would we have no right to employ printers to do our printing, or employ persons to do anything else necessary to be done for this Convention? It seems to me clear that we have that right, and just as clear that we have the right to employ these clerks, and that in doing so we do not go beyond what is necessary and proper. It is true, we might do without these clerks, although, perhaps, rather inconveniently. But I concur entirely in the remarks of the gentleman from Albany [Mr. Harris], as to the fact that these clerks are necessary and proper. There is this amount of work to be done by somebody; some member of the committee has to do this "drudgery," as it has been termed. In the first place, I think, for the convenience of the different members of the committee, a book ought to be kept, in which should be recorded the transactions of the committee. I think that every motion, every resolution, and every amendment ought to be recorded in that book, and the whole proceedings of the committee, also, in order that members who may be absent at the different sittings of the committee may have the opportunity to learn what has been done in their absence. Some member of the committee has got to take it upon himself to do this work unless the committee have a clerk to do it; they must go to this body and that body, and to this officer and that officer for information, and must prepare the reports, must see to the room; and if any one member of the committee is bound to do all this work, then he cannot participate in the deliberations of the committee, and he will have no time to spare to attend to the objects for which he was sent to this Convention. I say it is entirely proper that a clerk should be employed for the Judiciary Committee; but if the chairman of that committee does not want a clerk for it, or chooses to perform these duties himself, then there is no necessity for it to employ a clerk under this resolution. But certainly for the other large committees I think these clerks are necessary, and I shall vote against the motion to reconsider.

The question was then put on the motion of Mr. Alvord to reconsider, and it was carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Ballard, Barker, Beadle, Beckwith, Bell, Bergen, Bickford, E. Brooks, E. P. Brooks, J. Brooks, Carpenter, Case, Cheritree, Church, Cochran, Collahan, Conger, Cooke, Curtis, C. C. Dwight, Eddy, Ely, Ferry, Field, Folger, Fowler, Gerry, Gould, Grant, Graves, Greeley, Hadley, Hand, Hitchcock, Houston, Ketcham, Kinney, Landon, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, McDonald, Merritt, Merwin, Miller, C. E. Parker, Pond, Pot-

Mr. ALVORD—I suggest another point of order. It is unquestionably true that if this position had been taken in the first place, it would have been right to have sent the resolution to the Committee on Contingent Expenses.

But the Convention having taken action on the subject without objection on the part of any member, and the resolution having been considered in the Convention without going through the operation of sending it to the committee, the Convention cannot, at this stage of the proceedings, insist upon the reference to the committee without its affirmative vote.

The PRESIDENT—The Chair is of the opinion that the point of order is well taken.

Mr. CONGER—Mr. President, I desire to say briefly this—that I think this matter properly comes within the subject of contingent expenses.

If any of these committees desire to have a clerk, it is right and proper that they should have one.

Mr. BALLARD—I rise to a point of order, that as a vote was being taken when the question was raised, and the result had not been declared and the debate on the matter was begun while members were still standing, therefore the debate is out of order.

The PRESIDENT—The Chair was under the impression that the vote had been announced on the motion of Mr. Van Campen, but it has been informed by the Secretary that such was not the fact. The question is on the motion of the gentleman from Cattaraugus [Mr. Van Campen], to refer the subject to the Committee on Contingent Expenses.

Mr. CONGER—I have no desire to detain the Convention, but I hope—

Mr. LEE—I rise to a point of order, that we were in the midst of deciding the question by a vote when the debate commenced. The ayes had been taken and declared, and the noes had been called for, and we were in the act of rising when—

The PRESIDENT—The question will be taken again. Points of order were taken which the Chair felt bound to recognize. The question now is upon the reference of the resolution to the Committee on Contingent Expenses. Is the Convention ready for the question?

Mr. CONGER—Am I in order, Mr. President in taking the floor?

The PRESIDENT—You are.

Mr. CONGER—Then, Mr. President—

Mr. BICKFORD—I rise to a point of order. My point is, that the gentleman is not in order in rising when the question is being put.

The PRESIDENT—The gentleman is in order, and he will confine his remarks to the question of reference.

Mr. HAND—Is it in order, when the question is being taken and members are voting, to open debate upon it?

The PRESIDENT—It is in order to raise such points of order as were raised.

Mr. CONGER—Mr. President: the proposed reference I believe to be proper. The question is within the general subject of the contingent expenses of this body. The last Legislature made an appropriation of \$250,000 to cover certain expenses of this body, therein specifying all other expenses which would be com-

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sidered and treated as necessary expenses, or within the class of contingent expenses of this body. Having made such an appropriation, sufficient in amount to cover the contingent expenses, if it is necessary for the convenience and comfort of any of these committees to have a clerk, that clerk can be so appointed, and so provided for that his pay will come out of the contingent expenses of the Convention. As we have framed our rules in constituting this body, we have no longer power to appoint a clerk; but we have appointed a Secretary to this body and given him power to employ the necessary clerks to assist him. I think it is the proper and the best way, that this Convention should detail one or more of these clerks from time to time as they may be needed by these committees, or allow the Secretary to appoint such other assistants as may be necessary to perform the service. The whole question comes within what is ordinarily known as the contingent expenses of this body. We are not obliged to do what we otherwise would have to do, having appointed clerks, to call upon the next Legislature by a special provision to appropriate a sum of money as a just compensation for their services. I am one of those, Mr. President, who desire to keep within the law. I do not deny that the Convention has powers, in some respects, higher than the Legislature; but, as we are convened for the purpose of repressing unnecessary expenses, among other objects, it seems to me exceedingly injudicious when there is an ample provision of \$250,000, already made by appropriation to cover the contingent expenses of this body, that we should shiftlessly adopt a method which would oblige us in sheer necessity before we adjourn, to ask the Legislature to make an appropriation for some one object, because we have not exercised the skill to appoint those persons in some such way as to bring their compensation within our contingent and necessary expenses. Therefore, I think this proposed reference is right, and I hope the Committee on Contingent Expenses will so consider the subject that they can recommend the detailing of some person here already appointed, or who may hereafter be appointed, to do this work.

Mr. M. L. TOWNSEND—I desire to call the attention of the gentleman from Rockland [Mr. Conger], and the Convention, to a provision of the third section of the act which limits the powers of the Secretary to the appointment of three assistants.

Mr. SEYMOUR—I wish to say but a single word in reference to this subject. I hope that the motion which has been made by the gentleman from Cattaraugus [Mr. Van Campen], to refer the question to the Committee on Contingent Expenses, will not prevail. I should prefer to have the action of this Convention upon the matter. In reference to the appointment of clerks to the several committees, there may be a diversity of opinion as to their necessity to assist the labors of one committee or another. I can say in regard to the committee upon which I have the honor to be placed—the Committee on Canals—that if the resolution which has been adopted by this Convention this morning,

which is a resolution of inquiry into the management of canals, and authorizing the committee to send for persons and papers, is to be acted upon by that committee, there cannot be the least doubt of the necessity of such a clerk. Any body who knows the extensive nature of that subject, and knows also, that if the committee shall go into its investigation and make a thorough report upon it to this Convention, must know that a clerk is indispensable. I don't know what may be the views of the Committee on the Judiciary in regard to the business before them. I do not know what mode they intend to adopt to reach their conclusions which they will report to this body; but whenever the chairman of that committee, or the chairman of any other committee of this Convention, shall rise in his place and state the necessity of the committee to have a clerk, and give his reasons therefor, I shall be disposed, for one, to grant that committee the facilities necessary for the purpose of accomplishing their work, that the subjects submitted to them may be properly brought before the consideration of this Convention. Now, sir, if this motion of the gentleman from Cattaraugus [Mr. Van Campen] should not prevail, and the Convention should be brought to a direct vote upon the resolution of the gentleman from Albany, if it is practicable in the view of the Chair, I should like the question to be divided so that it may be taken upon each of these committees, and we can then decide, each member of the Convention in his own view, in reference to the necessities of these several committees for having a clerk, and vote in reference to each one separately. I, therefore, hope that the motion of the gentleman from Cattaraugus [Mr. Van Campen], will not prevail, and that we may come to a vote, and have this question disposed of in reference to the wants of each committee. I do not know with regard to the committee of which the gentleman from Albany [Mr. Harris], is chairman. I am willing to take his word, as he is at the head of that influential committee, to which important resolutions have been referred, and who are now seeking information, statistical and otherwise, as to their necessity for a clerk. I do not know but it will be necessary for that committee to employ a clerk in order to embody the results of their inquiries addressed to different parts of the State; and certainly I am willing to take the gentleman's word that he needs a clerk for the purpose of embodying that information, so that he may lay it before this Convention. I know certainly that it will be necessary for the Committee on Canals, if they go into the investigation which has been indicated by the resolution of the Convention this morning that they should have a clerk. As to the Committee on Finance, and other committees, they can speak for themselves. I hope therefore, that the motion of the gentleman from Cattaraugus [Mr. Van Campen], will not prevail, and that the Convention will come to a direct vote (for it is time that we had settled these questions), with reference to each committee separately.

Mr. HARRIS—I move to amend the motion by referring the resolution to the four committees



named in the resolution, that they may each report upon the subject to the Convention whether or not they need or desire clerks.

Mr. VAN CAMPEN — I accept the amendment.

Mr. HARRIS — We certainly do not want to force a clerk upon a committee that does not desire to have one. With respect to the committee of which I am chairman, I certainly should be glad to have the services of a clerk. But I am not anxious. But there is a good deal of work to be done; but I can do it. I can be clerk as well as chairman; I can serve the notices to call the committee together; I can take care of the room; and if necessary, I can sweep the room; I can keep the records and perhaps keep them better than a clerk, and make a better clerk than I would a chairman. But I am not very anxious that we should have a clerk. I feel, however, that much of my time could be saved for the performance of my duties as a member of the committee by having a clerk, and I hope that the committees will be allowed themselves to decide this matter.

Mr. VAN CAMPEN — I accept the amendment of the gentleman from Albany [Mr. Harris].

Mr. DUGANNE — I voted for the resolution to reconsider because I thought the proper method of doing business in this Convention is to refer all matters which come up for discussion to their proper channels, that they may go there to be examined and reported to this Convention. I shall, therefore, be in favor of giving this whole subject to the Committee on Contingent Expenses; and I shall, also, be in favor of a reconsideration of all other matters including that in reference to the debates.

The PRESIDENT — The Chair will inform the gentleman from New York [Mr. Duganne] that that proposition is not now before the Convention.

Mr. DUGANNE — I am aware that it is not. I merely alluded to the fact. I hope that this resolution will go to the Committee on Contingent Expenses, that they will report upon it, and we shall then be ready to decide upon the question. That committee can ascertain the facts as well as if we should refer it to the four committees named, as the one committee can ascertain which of the four committees desire clerks, and can report the fact to this house. Then the matter will come before us presented in the shape of a report stating whether or not the appointment and payment of clerks is a necessary and contingent expense of the Convention.

Mr. FOLGER — Lest there be some misunderstanding as to the views of the Judiciary Committee, I will state, that so far as I am entitled to speak for that committee, they would be very glad to have a clerk. They can foresee and anticipate much labor in the performance of their duties, which has been aptly termed by the gentleman from Albany [Mr. Harris] "drudgery." But have they a right to have a clerk? That is the question with the committee. I may be traveling over a dusty road, on a warm day on foot, and some person passes me in a comfortable carriage with fleet horses, I may desire

to avail myself of that equipage, but I have no right to. I must trudge on, on foot, because that is where fortune and necessity has put me. So it is in this matter. It has been said by the gentleman who sat behind me [Mr. Prindle], that this Convention is above the Legislature, because it is called in pursuance of the Constitution, and does not owe its life to a legislative act. I differ with the gentleman in that view, although I do not intend to go into any discussion of the question. I think that it has its whole life from the Legislative act and from nowhere else. In my view we are tied to the provisions of the legislative act and cannot step outside of the provisions of that act to incur any expenditure. That act does not contemplate or provide for the appointment of clerks of committees. It was drawn with reference to the public clamor, not unfounded, in reference to the unnecessary expenses of the legislature. This Convention was to be concerned in questions of economy; before its close it would ring with denunciations for the want of economy on the part of the Legislature, and would be very much concerned in measures providing for the economy of future Legislatures, and the act was drawn with reference to all that. It was designed to keep the expenses of this Convention as limited as possible. I hold that we cannot go outside of the provisions of the act and incur any expenditure. Is there a provision in the act for a clerk of a committee? Is there any provision for his payment? There is, to be sure, the physical power to appoint clerks of committees; but when the clerk thus appointed takes his certificate from the chairman of the number of days he has served, and goes to the Comptroller of the State, how does the Comptroller fix the amount of his compensation? Does he ask a *per diem*? Where is the law which fixes the *per diem*? Does he ask for his pay by the folio? Where is the law which fixes his pay by the folio? Does he ask a gross sum? Where is the law which fixes that gross sum? The necessity exists right at the threshold of referring the amount of compensation and the manner in which it shall be paid to some future body, which shall be occupied with details of legislation and not with general principles. We cannot pay a clerk, for the reason that we have not the right to appropriate money out of the State treasury; and the Constitution which we have sworn to support when we took our seats, expressly prohibits the payment of money out of the treasury, except it be under the authority of law, and an act appropriating it. We are not law-makers for the purpose of making appropriations of money, and for this reason we have no right to appoint clerks, for there is no authority existing for their payment. As much as I would desire to have a clerk to the committee of which I am a member, and as much as other committees may desire to have clerks, they cannot be legally appointed, and it was for that reason that I voted in favor of the motion to reconsider the resolution offered by the gentleman from Albany [Mr. Harris].

**Mr. HARRIS** — I agree, Mr. President, with the gentleman from Ontario [Mr. Folger], that this body has no right to make an appropriation to pay the clerks of committees, but I do not agree with him that therefore, we are to go without the necessary clerks. There are expenses which this body have already incurred, and which they will continue necessarily to incur, and which will have to be provided for by law. In the course of our proceedings, we passed a resolution inviting the clergy of this city to open our sessions with prayer. Now, sir, we cannot pay these clergymen; we do not expect to pay them, nor will the Comptroller now audit any account for their compensation. Yet, the next Legislature will provide for their payment, for it is the ordinary usage followed on such occasions. We have already, by a very emphatic vote, provided for the publication of the debates of this Convention, and we have agreed that those who publish them shall receive for their publication a large amount of money. We have no power to provide for the payment of that account. It will be necessary for the next Legislature to provide for it; so, I suppose in relation to various other incidental contingent expenses which will arise in the progress of our sessions. We shall have occasion to incur expenses, and these expenses will have to be provided for by the Legislature, not having been provided for in the act under which this Convention is organized. I do not suppose that there is any impropriety in it. It is a simple question of whether we need the services of clerks, or can do without them, and the payment of those clerks if we determine to have them, will be a matter in the discretion of the next legislature.

**Mr. VAN CAMPEN** — On this question to refer the resolution to the committees I desire to notice two or three points. I hold that in the law authorizing the meeting of this Convention, by its terms, to some extent, those things which are necessary, which grow out of the very necessities of this Convention, are entirely proper for us to provide for by our action, that though they are not specified in particulars, they are implied generally. Three or four committees I understand, ask for clerks. I think that almost every gentleman in this body will concede that the work of these committees is such that they will require clerks. While there is no specific provision for clerks in the law which authorizes the meeting of this Convention, I think that by the principles of good sense, sound discretion and judgment which we must exercise in our ordinary affairs in life, there is an implied authority for their employment. The question of economy has been suggested. Every day that this Convention is in session it is attended with an expense of fifteen hundred dollars. The employment of two or three or four clerks would amount perhaps to a cost to the State of one thousand dollars, and, yet, a day is occupied in discussing this question involving a greater loss to the State than would be sustained if the clerks were employed. Where is the economy in thus protracting this debate? These are proper questions for consideration to go before the community. When gentlemen undertake to bring the

question of economy up in reference to this matter there are two sides to it. I have no doubt that the employment of these clerks would save the time of this Convention, from three to four days or a week, and it is with that view, that it will be a saving of the time and add to the convenience of the Convention, and be an advantage to its labors, if the committees referred to think they need clerks, that I favor the resolution.

**Mr. SMITH** — I hope that the motion of the gentleman from Albany [Mr. Harris], will prevail. I believe that the chairmen of these various committees, and all the gentlemen who have voted for providing clerks to those committees are in favor of a wise and judicious economy in the proceedings of this Convention, as well as in the administration of the affairs of the State. But, sir, there is such a thing as a spurious and buncombe economy, and there is some danger, I fear, that we may run into that. Now these committees are charged with very important duties — duties which affect the interest and the welfare of the people of this great State, and which probably will affect those interests for the next twenty years. We desire, and the people desire that in the discharge of those duties, we shall have all the time, all the ability and all the experience of the members of these committees upon the great subjects which are given into their charge; and that they shall not spend their time and devote their attention to these little matters — matters of routine and of drudgery which can just as well be performed by men who have not their experience nor their ability. Now it seems to me, it would be bad economy — it would be unwise to take up the time and the ability of these men from the consideration of these grave questions with which they are charged, by compelling them to do the work of a clerk. A simple clerk without their experience and ability might just as well perform those duties. It is said that we have not the power. I have always understood that it is a well-settled principle, and one of very general application, that wherever a duty is imposed, and wherever a power is given or enjoined, all the necessary incidental powers for the purpose of discharging that duty, and executing that power are given with it. If we are to be tied up to the provisions which were made by the Legislature when they passed this enabling act, and cannot step an inch beyond the boundary they have prescribed, or the limitations they have made, we are very much restricted and cramped in the performance of our duties. It seems to me that in the discharge of these duties, we are called upon here, whenever the necessity arises for incurring an expense, to step beyond the limitations which they have prescribed; and we may do so, provided we do not violate any of the rules and principles that ought to govern such a body in the discharge of its duties. I can see no danger in providing for these clerks and leaving it, as has been suggested, to the next Legislature to pay them such compensation as they may be entitled to. It seems to me, Mr. President, that we treat with disrespect the chairmen of these committees who come before us and say that they require the

of eliminating from  
 from Fulton [Mr.  
 of it, I must say  
 if, in what he says of  
 and cheap reputation he alludes  
 what I said. I did not urge that  
 appointed on the score of the  
 Convention. I did not urge any  
 sake of making a cheap reputa-  
 constituents. I urged it upon this  
 we were here setting an example  
 these clerks and other like things, for  
 Legislature to pay for, of incurring a re-  
 without right, and with no law to  
 There is not a session of the Legislature  
 but what this State is mulcted in a hundred  
 dollars and upward, by just such reso-  
 as this. Some member rises in this  
 and offers a resolution that fifty red books  
 given to each member, officer and reporter.  
 Where is the law that authorizes an Assembly or  
 a Legislature to go into the publication of  
 red books? No such law exists. The mem-  
 ber knows it; the Assembly knows it, and  
 the printer himself who furnishes the books,  
 knows it. He knows that the resolution is of  
 itself mere waste paper, and that when he builds  
 his action upon it in the printing of the books, he  
 is building upon the sand; that nobody has a  
 legitimate claim, founded upon any such resolu-  
 tion. But what is the result? Time runs along,  
 and the next thing we have, is what is called the  
 Supply Bill, and in that Supply Bill, there is a  
 little sentence like this — "To Weed, Parsons, &  
 Co., for Manuals for the year 1866, \$5,000,  
 \$10,000, or \$50,000," whatever it may be. And  
 that is the first right they get to their money.  
 Until that law is passed, the Comptroller ignores  
 their claim, and they draw nothing from the State.  
 It is for these reasons, that I here set my face  
 against such action, as I have set it every where,  
 whether it be "cheap reputation" or not. I have  
 voted against those resolutions, because not

founded upon any law; not but what it is conve-  
 nient to have red books to answer the demands  
 of my constituents, to be paid for out of the treas-  
 ury of the State, instead of out of my own pocket,  
 but because there is no antecedent law to justify  
 any such expense. The Constitution says that no  
 money shall be spent, except it be appropriated  
 by law. Yet that is what we are initiating here,  
 without anything to authorize us. In passing this  
 resolution we are on the edge of a revolving vor-  
 tex which may draw in every imaginable expen-  
 diture.

**Mr. HITCHCOCK**—Every committee may ask  
 a clerk.

**Mr. FOLGER**—As the gentleman from Washing-  
 ton [Mr. Hitchcock], properly says, every com-  
 mittee might ask a clerk, and the gentleman from  
 Fulton [Mr. Smith,] says, if any chairman shall  
 state that his committee needs a clerk, he would  
 vote that committee one. I say that we are here to  
 establish some principle, some restriction by  
 which the reckless extravagance of legislation  
 may be prevented. The very action which is  
 proposed here, will create the extravagance in the  
 Legislature, by the example which is set. A res-  
 olution is introduced on the moment, and is passed  
 without any authority of law; but bye and bye,  
 with kindly feelings toward the printer, or what-  
 ever person it is who furnishes the means to car-  
 ry out the resolution, a clause is put in the Sup-  
 ply Bill, to retrospectively legalize the expendi-  
 ture and pay the money. Sir, it is against that  
 principle that I speak and vote.

**Mr. CASSIDY**—As the precedent of the Con-  
 vention of 1846 has been referred to by the gen-  
 tleman from Ontario [Mr. Folger], I would like to  
 call his attention to the fact—

**Mr. FOLGER**—I will state to the gentleman  
 that I have made no allusion to the Convention of  
 1846 in the remarks I have made.

**Mr. CASSIDY**—Then the reference was made  
 by some other gentleman. Chapter 267 of the  
 Laws of 1847, is "An act for the payment of cer-  
 tain expenses of the State Convention to revise  
 the Constitution." It provides for the payment  
 of certain expenses which had not been provided  
 for by the law of 1845, by which the Convention  
 was called. In that there is a provision for the  
 payment of the sum of \$393 to the clergymen  
 who officiated as chaplains; to Herman R. How-  
 lett, for additional compensation as door-keeper,  
 \$263; and various other appropriations to door-  
 keepers and messengers.

**Mr. M. I. TOWNSEND**—I did not mean to par-  
 ticipate in this discussion, but I cannot sit still and  
 have the vote which I may feel compelled to give  
 upon this floor, on the question upon which my  
 judgment has no doubt as to the propriety of my  
 conduct, compared with corrupt legislation, charged  
 to have occurred heretofore, and supposed possi-  
 ble to occur hereafter. It is charged that we  
 cannot refer this resolution to these committees,  
 because there is no warrant in law. Now  
 sir, if that be an expenditure and if that  
 expenditure shall be authorized by law, I cannot  
 conceive what it matters to the Constitution of  
 this State, or to the people of this State, whether  
 the payment be made in pursuance of a law  
 enacted hereafter, or a law enacted heretofore.

We do not propose to pay any money. We do not propose to incur a liability that could be enforced against this State if the State were an individual. Some members of this Convention believe that the expenditure on this account is necessary to carry on its business. In my appreciation, if this money be not paid until it shall be paid according to law, it makes no difference whether it be paid under the law, by authority of which this Convention is now assembled, or by a law to be passed hereafter, if the payment be made in accordance with the forms of law. I would not vote for any motion which I deemed would set an example which ought not to be followed. I believe it is necessary for the business of this Convention, that some of the committees should have a clerk for the proper discharge of their duties. The Committee on Finance is a committee of detail that will have an immense business before it, and I do not believe that the business of that committee will be properly done, however desirous the gentlemen of that committee may be to discharge their duty, without the aid of a clerk. The gentleman from Ontario [Mr. Folger] says that other committees will follow the example. Certainly no excuse could be offered for the committee upon which I have the honor to be placed, for asking for a clerk. So, I think it will be with nearly every committee except those which have asked for clerks; but whether that is so or not, I should like a report from these committees as to the reasons why they should have clerical aid. I shall not fear that I am doing a wrong to my constituents or a wrong to the State if we employ clerks and leave to the discretion of a future Legislature to decide whether the employment was proper and necessary for the work of this Convention, and whether the person so employed should be paid or not. I should feel that I had been just as conscientious in the discharge of my duty, and feel that I had acted with as high minded a view with reference to the interests of this State if I had voted to authorize this employment, to pay the expense of which was a matter to be provided for by a future Legislature, as if it had been provided for by the past; and, indeed, for certain reasons, I think we may hope that the sanction of a future Legislature will confer full as much honor upon the doings of this body as the sanction of the Legislature which has just dispersed.

Mr. ALVORD—At the risk of bringing to their feet the chairmen of committees which have been designated by the original resolution, as needing clerks, I wish to say here, that so far as my hearing teaches me, there is but one of those chairmen who has appeared upon this floor in favor of having a clerk appointed, while there is another who has spoken in opposition to it. And if I recollect aright, in hearing the announcement of the last vote, the chairmen of the other two committees named, voted in favor of a reconsideration of the resolution, so that so far as the records speak, there are three chairmen opposed to the resolution, appointing clerks to committees, and one chairman in favor of it.

Mr. PAIGE—There is a wise economy, and an unwise economy; and there is the same differ-

ence in the matter of expenditure. It seems to me, sir, that giving a clerk to one of these committees, and relieving the chairman of the onerous duties devolving upon him, is not an unwise economy. I have supported this resolution to afford such relief to the chairmen of these committees, because otherwise, much of their time will be occupied by the mere clerical and mechanical work of the committee. The people of this State require from us the use of our brains, and not the use of our hands. Sir, there, may be some nice metaphysical distinction, in reference to the power of passing this resolution. There is no inhibition against this Convention authorizing either of these committees appointing a clerk, but the want of power is in the appropriation of the money to pay the clerk, which this resolution does not pretend to provide for. Now, sir, we can authorize the appointment of a clerk. We are not prohibited from doing that. We have the discretion and power to do it. The question of appropriation to pay the clerk is another question, which we leave to the Legislature of the State. Sir, this is a simple question of economy, of securing for the investigations and work of the committee the exclusive use of the intellect of its chairman. I wish to relieve the Chairman from the onerous burden of performing the clerical labor, and I hope that the motion to refer the resolution to the several committees interested, will prevail.

Mr. McDONALD—I have but a single suggestion to make. Two of the committees which are proposed to be furnished with clerks, have been heard before the Convention through their chairmen, and we are now, in my opinion, quite as well prepared to decide this question as we shall be at any future time. If we refer the subject to three or four committees, then three or four reports will be submitted for discussion, and another day will be lost in debate. It has been suggested that each day's debate is an expense to the State. By taking the vote now we shall save our time and save expense to the State. I, therefore, hope that the resolution will not be referred, that a direct vote will now be taken, and the question finally decided.

Mr. GOULD—The gentleman from Onondaga [Mr. Alvord], has stated a fact which it seems to me ought to engage the serious attention of this Convention, and that is, of the three chairmen of these committees who have spoken, only one has spoken in favor of the resolution. I want to call the attention of the Convention to one fact that, the distinguished gentleman from Albany [Mr. Harris], has expressly declared that he cares very little about this matter; so that the only authority upon which this expenditure is called for is indifferent in reference to it. The chairman of another of the committees has told us that there is no necessity whatever for such an appointment, so that we are not only going on to make these expenditures without any authority whatever, but also without the existence of any necessity for it. Gentlemen have spoken of the labors of the chairman of one of these committees as exceedingly onerous; but there is no evidence of that fact before us. It seems to me that if we vote for the employment of these clerks we are voting against evidence and against sound economy.



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subject to the reference. Let this go to the committee: let them report upon it, and all will then be satisfied.

Mr. BELL—Mr. President, as I introduced the resolution, providing that the daily sessions of this Convention be opened by the services of clergymen, and as the subject has been frequently referred to this morning, I feel called upon to state, that at the time I introduced that resolution, I was not aware of the provisions of the act for the assembling of this body, in that regard; but I did it, believing it to be fit and proper that the sessions of this body should be opened by prayer. The act does not in terms provide for the payment, but it is presumed that there will be an appropriation to compensate these gentlemen who officiate for us daily. Thus much, I think I am called upon to say in that regard. I fully agree with the gentleman from Columbia [Mr. Gould], in regard to the strict construction of the law assembling us in this capacity. I do not believe we should overstep those bounds, but that we should be governed, as near as possible, by the provisions of that act and I fully believe, as he has said, that one of the leading motives of the people in voting for this Convention, was that we might in some way provide against the unlawful and uncalled for expenditures of money by the Legislature. The people are aware that from these small beginnings—these, what are called, small and insignificant appropriations, the State and the people thereof, have become demoralized. The practice of the Legislature, in providing for attendants upon its sessions, does more to demoralize that body than probably any other cause whatever, and it has become so common in the Legislature assembling here, that they provide, really, more employees than they have members. These employees frequently, if they are not already professed lobbyists, become so before the close of the session. They not only lobby for increased compensation and extra compensation for themselves, but in many cases they are engaged in all the outside lobby movements in the State. Thus it is, that instead of having a Legislature assembled to be conducted as provided by the Constitution, we have a Legislature which has grown up in evil practices to be a perfectly unmanageable body, with more officers than members. I am of the opinion, sir, that this whole matter can be disposed of in accordance with the law under which we are assembled, and also to promote the convenience of the different committees. I agree with the honorable gentleman from Onondaga [Mr. Alvord], that there is a surplus of door-keepers and employees who could be properly detailed to discharge the duties required by these various committees—so far, at least, as keeping the rooms in order is concerned, and taking care of their papers and other duties of that kind, and I hope they may be employed for that purpose, instead of introducing other persons in the form of clerks for these several committees. Let us keep within the bounds of the law, that we may answer the great expectations of the people in calling us here to revise and amend the Constitution.

Mr. RATHBUN—I rise for the purpose of making a single suggestion to the Convention. As

that the people voted in large numbers, or at least voted for the present Convention, in order that this looseness of legislation might be stopped. I wish to call attention to a remark which was made by the gentleman from Albany [Mr. Harris], who commenced his speech, when last up, by referring to certain expenditures which we have already made. We have been referred to the employment of chaplains, for which there is no authority of law; and we have also been referred to the removal of these partitions for which there is no authority of law; and I trust the Convention will take warning by those precedents which have been established, not to establish any other precedent, which shall furnish an avenue to a greater and more corrupt expenditure, because, sir, on the next irregular expenditure that shall be demanded here, gentlemen will quote this very employment of clerks as a reason for it. There is no hope sir, of introducing a principle of economy into the Convention, and no hope of setting an example to the Legislature of an economical expenditure of the public money, unless the foot is placed down squarely and not taken up. It is an old principle, sir, sanctioned by the Scriptures, that wicked men and seducers wax worse and worse; that is the most terrible thing in being a wicked man and seducer, because by the absolute operation of Divine Providence they must wax worse and worse. The very fact of taking a wrong step leads on by an irrepressible tendency to take other and deeper wrong steps. I trust, in view of all these things, the Convention will be cautious in taking any wrong steps in this direction.

Mr. CORBETT—If the gentlemen who are opposing this resolution anticipate such a favorable result from the committee, why do they

I understand it, the Convention have appointed a committee charged mainly with the duties of restricting the power of the Legislature; and, as I understand, that committee have already had under consideration, among the topics to which they propose to apply restriction in reference to the power of the Legislature to dispose of the public money, the very proposition which is now before the Convention—or they have considered a subject which would embrace this subject now under consideration. For instance, they have already taken into consideration the propriety of introducing an amendment to the Constitution of this State, which will prohibit the Legislature from granting any money upon any individual claim which may be made to them for that purpose; so as to divest it entirely of all the power which it has heretofore exercised with regard to this great question of claims.

Mr. W. C. BROWN—Mr. President, I rise to a question of order—that the gentleman is not speaking to the question which is under discussion.

The PRESIDENT—The Chair has often called the attention of gentlemen to the necessity of remembering the rule in that respect.

Mr. RATHBUN—If I am out of order, Mr. President, I hope to be pardoned. I was simply endeavoring to state the objections which it seems to me lie exactly in our way. We shall be called upon by and bye to vote on this very question, which will apply to this very vote we are now about to take. If we vote to expend this money, or in other words, to incur this debt, how can we, before we get through, apply a prohibitory clause upon the power of the Legislature to pay this precise debt? I ask gentlemen where they will stand then? Because they will be called upon to meet the question squarely. It seems to me, we should come to that question with clean hands, without any mistakes which will stand in the way of our voting as we feel we ought to vote, because we have made a blunder now. That is all I desire to say. In taking the step now proposed, we put a check and control upon our own action, when we come to vote upon the questions which will be submitted to the Convention by and bye, as to any restrictions upon the power of the Legislature, which will embrace this proposition.

Mr. MERRITT—I oppose this reference, because it is unusual. If it is proper to be referred at all, it strikes me it should be referred to the Committee on Contingent Expenses. I, therefore, am in favor of that reference, and I wish also to protest against the imputation, of the introduction of clergymen here, being used as a precedent. It is well known to us all, I presume, that there is an association in this city, whose voluntary duty it is to provide the services of clergymen to any considerable number of people who really need the benefit of clergy. This law did not provide for that, but in the discharge of their duty, upon the invitation of this body, they very properly invited the clergy of the city to consider the subject. I presume, in the first instance, they considered whether we needed their services, and deciding that we did, they concluded to rotate and divide this duty among themselves,

and it is not to be presumed that they come here and render their services with any expectation of compensation.

The question was then put upon the motion of Mr. Van Campen as amended, and it was declared carried.

Mr. GREELEY offered the following resolution:

*Resolved*, That the Committee on Rules be instructed to consider the propriety of adopting the following additional rules, with such modifications as they may deem advisable:

RULE 46. On and after the 8th day of July the Convention shall meet at 10 A. M., unless it shall otherwise order, and no leave of absence, hereafter granted, shall extend beyond that day and hour.

RULE 47. Unless the Convention shall otherwise direct, the first hour of each day's sitting shall be devoted to morning business, and at 11 A. M. the Convention shall proceed to the order of the day.

RULE 48. Unless otherwise ordered by a vote of two-thirds of the members present, there shall be devoted to the consideration of the reports of the several committees, as follows:—Judiciary Committee, five days; Finance, Canals and Cities, each, five days; Right of Suffrage and Powers and Duties of the Legislature, each three days; other Standing Committees, consisting of seven members, each two days.

RULE 49. When half the time allotted as above to the report of any committee, shall have been expended, debate on said report, in Committee of the Whole, shall cease, and the committee shall proceed to vote on every amendment to said report which shall have been or may then be proposed.

RULE 50. When the Convention shall have voted upon all the amendments to any report which shall have been adopted in Committee of the Whole, any amendment which shall have been negatived in said committee, may be renewed, and a vote of the Convention demanded thereon.

Which was referred to the Committee on Rules.

Mr. KETCHAM offered the following resolution:

*Resolved*, That the Committee on the Judiciary inquire into the propriety of limiting the jurisdiction of justices of the peace to \$50, and increasing that of the county courts to \$2,500, and prohibiting appeals to the Court of Appeals of any action originating in a justice's court, or in the county court, wherein the amount does not exceed \$500.

Authorizing county judges to hold courts in counties other than those in and for which they are elected, and requiring the adoption of uniform rules of practice in the county courts throughout the State, and prohibiting county judges from practicing in any of the courts of the State, during the continuance of their office.

Which was referred to the Committee on the Judiciary.

Mr. E. A. BROWN offered the following resolution:

*Resolved*, That the Committee on the Judiciary be respectfully requested to inquire into the expe-

diency of organizing the several courts of this State substantially as follows:

First. The court for the trial of impeachment to be composed of the Lieutenant-Governor, the Senators, and the Judges of the Court of Appeals, substantially as provided in the existing Constitution.

Second. A Court of Appeals to be composed of nine judges, who shall be elected by the people of the whole State; the judges of the Court of Appeals in office, or who shall have been elected when this Constitution shall go into operation, to serve out the several terms for which they shall have been elected. The five additional judges to be elected for such terms that the time of one judge shall expire every two years, and the full term of office of a judge of the Court of Appeals shall be hereafter eighteen years.

That such Court of Appeals shall be divided into two or three subdivisions or sections, which shall hold courts separately, with power to hear and determine such causes as shall be allotted to each section of said court, in a manner to be provided by law or by the rules of said Court.

That the concurrence of at least three judges shall be necessary to make an authoritative decision.

In case of a difference of opinion in any case between the judges of any such section of said court, then such cause may be re-argued before the full bench of all the judges. Provision may also be made for the hearing of causes of great importance or difficulty before the whole court, in a manner to be prescribed by law, or by rules of said court.

Third. The Supreme Court shall be constituted substantially as at present, with power in the Legislature to increase the number of judicial districts, and an additional number of justices of such court, as may be required by the business of the State.

Fourth. County Courts substantially as now organized, with jurisdiction in civil actions, to an amount not exceeding \$500 in amount.

Fifth. Surrogates' courts to be constituted substantially as at present. But in all cases the surrogate shall be a separate officer from the county judge, and be also authorized to discharge the duties usually performed by the justices of the Supreme Court at chambers.

Which was referred to the Committee on the Judiciary.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That so much of the twenty-second annual report of the New York Prison Association as contains the testimony of prison officers and ex-prison officers, taken by a commission of that association under a joint resolution of the Legislature, passed in the year 1866, together with the summary of such testimony prepared by the commission contained on pages 318 to 500, inclusive, of such report, be referred to the Committee on State Prisons, etc.

Which was referred to the Committee on State Prisons.

Mr. SEAVER, from the Committee on Printing, made the following report:

Your committee, to whom was referred the following resolution, to wit:

IN CONVENTION,  
June 21, 1867. }

On motion of Mr. ARCHER,

*Resolved*, That there be printed 500 copies of the Rules and Standing Committees together in pamphlet form for the use of the Convention.

Would respectfully recommend the printing of five hundred copies of the Rules and of the Standing Committees, as provided in the foregoing resolution, in addition to the usual number.

And your committee would also recommend that an additional eight hundred copies of the list of committees, revised and corrected, be printed, and substituted on the files of this Convention for Document No. 9, now on the files.

J. J. SEAVER, *Chairman*.

Which was agreed to.

Mr. M. I. TOWNSEND — I wish to know if in the order of unfinished business, the consideration of the question brought before the Convention by the gentleman from Westchester [Mr. Greeley] may now be taken up.

The PRESIDENT — It will come up properly, the Chair rules, under the head of resolutions.

Mr. W. C. BROWN offered the following resolution:

*Resolved*, That the Constitution should contain a provision in these words relating to the Supreme Court.

§ 1. The Supreme Court is continued with general jurisdiction in law and equity.

§ 2. The division of the State into eight judicial districts shall remain as at present until changed pursuant hereto.

§ 3. There shall continue to be four justices of the Supreme Court for each judicial district, and as many more for districts containing the cities of New York, Brooklyn or Buffalo, or a population of over six hundred thousand, as are, or may be authorized by law.

§ 4. The justices shall be elected or appointed as hereinafter provided, and shall hold office for life, or until they arrive at the age of sixty-five years, or until resignation or removal. The justices in office at the time this Constitution takes effect, shall hold by the above tenure.

§ 5. The Legislature may re-organize the judicial districts only at the first session after the adoption of this Constitution, and at the first session after the return of every enumeration under this Constitution, or under the laws of the United States. The districts shall be compact and bounded by county lines. They may at any such session increase or diminish the number of districts, only one district in each session. No diminution of districts shall have the effect to remove a justice from office. On the formation of an additional district there shall be four additional justices.

§ 6. Provision may be made by law for designating, from time to time, one of the justices in each district to be the presiding justice, or chief justice of the district. Any three or more may hold general terms; any one or more may hold special terms and circuit courts, and preside in courts of oyer and terminer, and perform such other duties in the administration of justice as the Legislature may prescribe.

§ 7. The justices of the Supreme Court shall

severally receive at stated times, for their services, a compensation to be established by law, which shall not be diminished during their continuance in office. They may be continued in office after arriving at the age of sixty-five years by special order of the Governor, and the concurrence of three-fifths of all the Senators elected.

§ 8. They shall not hold any other office of public trust. All votes for either of them for any elective office, except one strictly judicial, given by the people or the Legislature, shall be void.

§ 9. Any male citizen of the age of twenty-one years, of good moral character, and who possesses the requisite qualifications of learning and ability, shall be entitled to admission to practice in all the courts of the State. The Legislature shall provide for ascertaining such qualifications.

§ 10. Testimony in equity cases shall be taken in like manner as in cases at law.

§ 11. Judges of the Court of Appeals and justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of each house concur therein. All judicial officers except those mentioned in this section, and except justices and judges of inferior courts, not of record, may be removed by the Senate, on the recommendation of the Governor; but no removal shall be made by virtue of this section, unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journal.

§ 12. No judge or justice shall take part in the decision of any appeal from a judgment, order or decree entered by his direction, or by direction of a court of which he was a member.

§ 13. The Supreme Court shall not, nor shall any justice thereof, exercise any power of appointment to public office, except that they may be authorized by law to appoint reporters.

Which was referred to the Committee on the Judiciary.

Mr. GOULD — In calling the order of business, the Chair, undoubtedly inadvertently, omitted to call for the reports of Select Committees.

The PRESIDENT — The Chair did call for them in their proper order.

Mr. GOULD — I did not hear the call of the Chair, and I would like now to make a report.

The PRESIDENT — If there is no objection, the report of the Select Committee will be received.

Objection being made, the report was not received.

On motion of Mr. ARCHER, the Convention adjourned.

WEDNESDAY, JUNE 26, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. H. N. POHLMAN.

The journal of yesterday was read by the SECRETARY, no objection being made thereto, it was declared approved.

Mr. HARRIS — I present the petition of sundry citizens of the town of Williamsville, in the county

of Erie, representing that for the last ten years, a practice has prevailed in the Legislature, and in municipal corporations and many of the Boards of Supervisors, of granting public funds to various churches, colleges and institutions of a sectarian character; and they ask that provisions may be inserted in the Constitution, prohibiting the Legislature from making any such grants of funds or property and also prohibiting municipal corporations and counties or towns from doing the same. I move that the petition be received and referred to the Committee on the Powers and Duties of the Legislature.

The petition was referred to the Committee on the Powers and Duties of the Legislature.

Mr. RATHBUN presented a petition for universal suffrage as well for women as for men.

Which was referred to the Committee on the Right of Suffrage.

Mr. C. E. PARKER presented a petition of citizens of Tioga county, asking for female suffrage.

Which was referred to the Committee on the Right of Suffrage.

Mr. CURTIS presented a petition signed by Mrs. Daniel Cady and 206 others, asking to have the word "male" stricken from the Constitution.

Which was referred to the Committee on the Right of Suffrage.

Mr. LAPHAM presented a petition asking for female suffrage.

Which was referred to the Committee on the Right of Suffrage.

Mr. GRAVES — I present thirty-seven petitions: one from Brooklyn, three from Mount Morris, one from Washingtonville, one from Troy, one from Lima, eight from New York city, three from Buffalo, two from Skaneateles, one from Lockport, one from Mount Morris, one from Poughkeepsie, one from Dutchess county, nine from Utica, Oneida county, one from Fairfield, Herkimer county, in all containing the signatures of two thousand and forty persons, asking for equal suffrage.

The petitions were referred to the Committee on the Right of Suffrage.

Mr. STRATTON presented a communication from H. B. Wilson on the alleged corruptions of the Legislature, and suggesting remedies therefor.

Mr. STRATTON — Mr. President, from the peculiar and startling facts contained in the communication, I ask that it may be read.

The SECRETARY then proceeded to read the communication. During the reading,

Mr. HARRIS moved that the further reading be dispensed with.

Which was lost, and the reading of the communication was proceeded with to its conclusion.

Mr. STRATTON — I understand there is a proposition for a select committee to which this properly would be referred, which now lays upon the table, and I ask, therefore, that this communication be laid on the table until the formation of such committee.

Mr. BICKFORD — In relation to the extraordinary speech which has just been made by an individual outside of this Convention, and not connected with it in any way, I move that it be not



included in the stenographic report and published at the expense of the State.

The PRESIDENT — The communication for the present, lies upon the table, and can only be acted upon by being first taken from the table.

The PRESIDENT presented a communication from the department of the Metropolitan Police, of the city of New York, in reply to a resolution of the Convention.

The SECRETARY proceeded to read the communication as follows:

CENTRAL DEPARTMENT OF THE METROPOLITAN POLICE, 300 MULBERRY STREET,  
NEW YORK, June 24, 1867, }

*To the Constitutional Convention:*

GENTLEMEN: I am instructed by the Board of Metropolitan Police to inform you that the required number of copies of the last report of the board, has been transmitted to Luther Caldwell, Esq., Secretary of the Convention, in compliance with the resolution adopted the 21st of June, instant.

By order of the Board of Metropolitan Police.  
THOS. C. ACTON, *President*.

The PRESIDENT presented a communication from the Secretary of State in reply to a resolution of the Convention, requesting information in reference to the Indian tribes in this State.

The SECRETARY proceeded to read the communication.

Mr. E. BROOKS moved that the further reading of the communication be dispensed with, and that it be laid upon the table and printed.

Mr. SPENCER — A portion of the information contained in that report, I suppose is contained in the Manual, but there is another portion which I suppose is not.

Mr. E. BROOKS — I understand that this is a full answer to the resolution adopted by the Convention, and therefore, to save time, I made the motion.

The communication was ordered to be printed and referred to the Committee on Indian affairs.

Mr. GOULD from the select committee appointed to prepare a copy of the Constitution, with comparative notes, etc., made the following report:

The select committee appointed to prepare a copy of the Constitution of the State, with comparative notes and references now

Report, That they have performed the duty assigned to them. A portion of the printing has been done, and the whole work will be laid upon the tables of members as soon as the remainder can be printed.

Many gentlemen who have seen the printed sheets, have expressed a desire that extra copies of it should be printed, in order that those gentlemen of learning and leisure, in various parts of the State, who are preparing to aid the Convention with their advice and assistance, might be furnished with a copy thereof. Your committee concur with them in the opinion that the interests of the State would be promoted by the printing of extra copies, and therefore offer the following resolution for the consideration of the Convention.

*Resolved*, That twice the usual number of copies

of the Constitution, with notes and references, be printed for the use of the Convention.

Which was referred to the Committee on Printing.

Mr. GERRY called up the resolution offered by him yesterday, which the Secretary proceeded to read as follows:

*Resolved*, That the clerk of the Assembly be requested to furnish this Convention with a list of all the titles of bills introduced at the last session of the Assembly, relating to, or affecting the city of New York.

Mr. McDONALD — I move that the resolution be amended by inserting "passed" instead of "introduced."

Mr. GERRY — My object in offering that resolution was not simply for the purpose of ascertaining the number of bills affecting the city of New York, which have been passed, but more particularly for the information of this Convention, showing the number of applications which have been made during the last year to the Legislature, proposing either amendments to local laws affecting the city of New York, or for the furtherance of private interests of individuals residing within the city of New York. I have no objection to an amendment which shall also require a statement of such bills as have been passed, but I desire for the information of this Convention, to know what bills have been presented, and which as I am instructed, the clerk of the Assembly, by reference to his minutes, can readily procure and furnish us.

The question being put upon the amendment offered by Mr. McDonald, it was declared to be lost.

Mr. KRUM — I move to amend the resolution by adding thereto "and the title of bills relating to corporations."

Mr. GERRY — I accept that amendment.

The question was then put on the resolution as amended, and it was declared adopted.

Mr. OPDYKE — I move to take from the table the resolution offered by me on Monday last, in reference to the appointment of a select committee.

The SECRETARY then proceeded to read the resolution, as follows:

*Resolved*, That a select committee of five be appointed to consider the practicability of suppressing official corruption by means of constitutional provisions, with instructions to report to the Convention.

The question was then put upon the resolution of Mr. Opdyke, and it was declared adopted.

Mr. HAND offered the following resolution:

*Resolved*, That the Committee on the Powers and Duties of the Legislature consider the expediency of adding the following section to article fourth of the Constitution:

1. Every bill which shall have passed the Senate and Assembly, and have been approved by the Governor, as provided in the preceding section, shall be referred to the Court of Appeals, or a quorum thereof, and by them be carefully reviewed. If, after such review, the court, or a majority of their whole number, shall find the enactment in all its parts in accordance with the provisions of this Constitution, it shall be indorsed

*"Constitutional,"* and signed by the President of the court, and the constitutionality of said act shall never be called in question by any tribunal in the State.

2. For the performance of the duties indicated in these sections, the Court of Appeals shall hold a special session, commencing within two months after the opening of each regular session of the Legislature, and continue until the close of the legislative term, and as much longer as may be necessary for the careful performance of the duties herein indicated.

If any bill committed to them for review shall be deemed by them unconstitutional, they shall within ten days return the same to the House where it originated, for reconsideration, carefully pointing out the portions of the act which they regard as in violation of the Constitution. If the Legislature choose to modify the same and, the Governor approve as before provided, it shall be once more submitted to the Court of Appeals for review. Should the Legislature adjourn, before the court shall have completed its reviews, any bill they may examine after said adjournment, and find in conflict with the provisions of the Constitution, it shall be placed in the hands of the Governor, and by him submitted to the Legislature for their consideration (on the first day of their session), to be disposed of as before provided.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That Committee No. 5, on the Governor, etc., be instructed to inquire into the expediency of making the following provision respecting the powers of the Governor.

The Governor may approve any appropriation and disapprove any other appropriation in the same bill. In such case, he shall, in signing the bill, designate the appropriations disapproved, and shall return a copy of such appropriations, with his objections, to the House in which the bill shall have originated, and the same proceedings shall then be had as in the case of other bills disapproved by the Governor.

Which was referred to the Committee on the Governor, etc.

Mr. BECKWITH—I move to take up the resolution offered by me yesterday, which was laid upon the table.

The SECRETARY then proceeded to read the resolution, as follows:

*Resolved*, That the Auditor of the Canal Department be and he is hereby requested to furnish to this Convention the following information:

1. The original cost of the Champlain canal.
2. The cost of any and all enlargements, repairs and improvements thereof.
3. The tolls received in each fiscal year from 1846 to 1866, inclusive.
4. The cost of collection, superintendence and repairs thereof for each year during the time aforesaid.
5. The tons shipped on the Champlain canal each year during that time, stating the same separately from those of the Erie canal, so far as practicable.

Mr. BECKWITH—I move to amend the reso-

lution by striking out from "1846 to 1866 inclusive."

The PRESIDENT—The amendment suggested will be made, no action having been had upon the resolution.

Mr. BECKWITH—I move this resolution for the reason that I find in the Manual, which has been laid upon our tables, that the cost, expenses and tolls of the Champlain canal, are stated in conjunction with those of the Erie canal. I would like to have them stated separately.

Mr. MILLER—I shall very cheerfully vote for the resolution offered by the gentleman from Clinton [Mr. Beckwith]. I would like to have had it broader, so as to refer to all of the canals of the State; but I will not embarrass the resolution nor raise a discussion by offering an amendment at present. I believe, sir, that there will be no more important question come before this Convention than the question relating to the reform in the management of our canals, and the reform in the organization of the Canal Department of the State. I think, sir, that there is no question to-day commanding so much of the attention and interest of the people of the State. I believe, that the resolution which was offered by the gentleman from Westchester [Mr. Greeley], a few days since, brought out some very important information which this Convention will do well to consider; some information that will be valuable when we come to discuss the proper organization of the Canal Department of the State. It is true, sir, that we learn nothing from the response to that resolution about the canals; we do not get the information that we desire; but we do, sir, obtain much information in relation to the Canal Department. We found that, as at present organized, it was a mysterious and complicated institution, that the most intelligent men of this Convention little understood; we found further, sir, that it was an institution that as at present organized consists of a number of co-ordinate equal officers, or equal bureaus without any responsible head. Now, sir, I suggest that this organization however much it may favor the discharge of the routine business in the department, is perfectly fatal to any just responsibility and accountability in the discharge and control of their great interests.

Mr. M. I. TOWNSEND—I rise to a question of order, that the discussion of the gentleman occupying the floor is not pertinent to the consideration of the question before the Convention.

The PRESIDENT—The Chair hardly thinks the point of order well taken; the question is debatable. The gentleman will confine himself to the motion.

Mr. MILLER—Mr. President, I understand that this motion is to call for information in reference to the canals of our State, and it is in that light that I am discussing it. But sir, in order to obtain this information we must go to the Canal Department of the State. Now, I notice that this resolution is directed to the Auditor of the Canal Department. I do not know but that this is the most proper direction; at all events I am in favor of piercing this Canal Department in every direction, in every board and bureau until we have obtained the information that we

need and desire here. I would say, Mr. President, that the general ignorance, if I may so speak, in relation to the organization of that department, is not confined to this Convention; practical business men on the line of your canals, and who are its patrons, are as much in doubt as we are in reference to where the responsibility lies. I noticed only a few days ago a report of the proceedings of a meeting held at Troy, in this State, to protest against the mismanagement of this Champlain canal, and all the speakers were agreed that there was gross and outrageous mismanagement, but not one of them, at the time, could tell where the responsibility and blame lay. They said that the superintendent claimed it was not his fault, and the Canal Commissioner said it was not his. Some of them had visited the department in this city and could find nobody that could take the responsibility here. I have understood that since that meeting there has been another held, at which they had censured a number of State officers. But, Mr. President, when you divide the responsibility—when you censure men in gross—you have no responsibility left. You must have an official head, and then he is responsible not only for his own acts, but for the acts of his subordinates. You must have somebody to whom the people can look when there is mismanagement and say "you are the man." Now, sir, we have nobody of this class. It is some satisfaction when people are misgoverned and abused to have somebody to blame, but in this case, with the grossest mismanagement acknowledged, it is nobody's fault. We have a swarm of vultures feeding upon the vitals of the State and nobody to blame. I wish to suggest to the able Committee on the Canals that the first question for them to examine is as to providing a remedy for the gross mismanagement of the canals of this State, and until that remedy is found, and the remedy is made certain and permanent, all other questions in relation to the canals must be postponed. Now, I suggest, Mr. President, that this idea of having a responsible head to the Canal Department of this State is worthy of consideration—

The PRESIDENT—The Chair will respectfully inform the gentleman from Delaware [Mr. Miller], that he is taking a pretty wide range of debate.

Mr. MILLER—I am much obliged for the liberal interpretation the Chair has given. I have said all that I wished to say. [Laughter.]

Mr. BECKWITH—I find upon looking into the Manual which has been laid upon our table, that the matters for which I have inquired, are separately stated as to all the canals except the Erie and Champlain canals—as to those two Canals they are stated together, and not separately as in the case of the others.

The question was then put upon the resolution of Mr. Beckwith, and it was declared adopted.

Mr. FRANCIS offered the following resolution:

*Resolved*, That the Committee on the Right of Suffrage, etc., consider the propriety of requiring the payment of a tax by every elector, as a condition of the exercise of the right of suffrage, and that article three, section one of the Constitution of Pennsylvania, on this subject be referred to

said committee, as affording the basis of a constitutional provision to be adopted by this Convention.

Which was referred to the Committee on the Right of Suffrage.

Mr. A. F. ALLEN—I call for the consideration of the resolution introduced by me on Monday, calling for information.

The SECRETARY then proceeded to read the resolution, as follows:

*Resolved*, That the Comptroller be requested to report to this Convention the amount of accrued interest, remaining unpaid belonging to the common school fund, arising from money loaned, also, upon bonds for land sold, and the cause why annual interest is not paid; also, if in his judgment any of the bonds for money loaned, or bonds for land sold, are insecurely invested, if so, what amount, and that the amounts of each be reported separately.

The question was then put on the resolution of Mr. A. F. Allen and it was declared adopted.

Mr. LARREMORE offered the following resolution:

*Resolved*, That it be referred to the Committee on Corporations, other than Municipal, to inquire into the expediency and necessity of inserting a clause in the Constitution, requiring the Legislature to pass a general act, in pursuance of which, gas companies may be incorporated.

Which was referred to the Committee on Corporations other than Municipal.

Mr. KINNEY offered the following resolution:

*Resolved*, That the Committee on Judiciary be requested to inquire into the propriety of conferring upon justices of the peace, concurrent jurisdiction with coroners over the subject of inquests.

Which was referred to the Committee on the Judiciary.

Mr. SEYMOUR offered the following resolution and asked that it be referred to the Committee on the Organization of the Legislature.

*Resolved*, That the Committee on the Legislature be requested to inquire into the expediency of an organization of the Legislature by the Constitution, so that there shall be a Senate of thirty-two members, to be elected—four from each of eight senatorial districts, into which this State shall be divided—to hold their offices for four years, and after the first election, one Senator to be elected annually from each senatorial district and that there shall be a House of Assembly, to be elected annually, to consist of 128 members, to be apportioned among, and elected from the several counties of the State, according to their population, each county being entitled to at least one member, and that the compensation of the members of the Legislature, be paid by annual salary to be fixed by the Constitution.

Which was referred to the Committee on the Organization of the Legislature.

Mr. GRAVES—As our national holiday is fast approaching, I have no doubt the members of this Convention desire to remember it in some form, and as the duties of the members increase each day, to prevent any embarrassment in the faithful discharge of their duty, I offer the following resolution:

*Resolved*, That this Convention keep an open

session from Friday of this week until July 8th, to enable the several committees to pursue their labors, and that during said time the Convention will not meet daily at the Capitol, but the members of the several committees will meet and compare views, or examine separately the subject-matter, submitted to them, and report to the Convention in Committee of the Whole at its session on Monday evening, July 8, 7½ P. M., or as soon thereafter as consistent with their duty.

Mr. GREELEY — The only objection I have to the adoption of that resolution is that the committees will not remain in session without the sessions of this body continue. They will simply adjourn.

The PRESIDENT — The question giving rise to debate it will lie over under the rule.

Mr. POND — I wish to call up the resolution offered by me in regard to the appointment of a committee to inquire into and report on the expediency of adjourning this Convention to Saratoga.

The SECRETARY then proceeded to read the resolution as follows:

*Resolved*, That a committee of five be appointed by the Chair to inquire into and report upon the expediency of adjourning this Convention to Saratoga.

Mr. PRESIDENT — The resolution having been tabled by a vote, the question is on taking it from the table.

The question was then put on taking the resolution from the table, and it was declared carried.

Mr. POND — This resolution, as I understood it, went over because it gave rise to debate, and was not laid on the table by a vote. But the subject being now properly before the Convention, I will proceed. This resolution was introduced by me with a view to the contingency contemplated by the framers of the act under which this Convention is assembled. There have been various questions presented to this Convention, in reference to which discussion has been had, to the effect that the Convention had no power over those subjects. But in regard to this, sir, the framers of this act under which we have assembled, clearly contemplated a contingency arising when it might be proper for the sessions of this Convention to be held at Saratoga, or elsewhere than in Albany. Now, sir, the hot season is close upon us, and there is, in my mind, not much doubt but that the contingency contemplated will arise; and, inasmuch as we are approaching the heated term, I think it would be proper that the subject should be examined by the committee, so that when the contingency does arise, the facts may have been ascertained, and presented in an authoritative manner, to this Convention as to where is the proper place for holding its sessions outside of this city. I do not propose to go into the merits of the question on this resolution to appoint a committee. The appropriate time to discuss its merits will be if the committee is appointed, when the committee shall have examined the question and reported upon it. I think, however, it may be proper to say that, in my judgment, the convenience and health of the members will be promoted by a change, and by holding a session of the

Convention elsewhere than in Albany. For the purpose of information, without going into detail myself, I will merely refer delegates to the speeches of the members of the Legislature from Albany as to the condition of the building where the sessions of the Legislature are held: and if, as they claim, this chamber is not a fit place for the Assembly in the winter, it certainly cannot be a proper place for the sessions of a larger body during the heated term of the summer. Without, therefore, going into the merits of the question, I hope the committee will be appointed, that they may examine into the question and see whether it will not be proper to hold the sessions of this Convention at a place that will secure the safety of the constitutions of its members while they are getting up a political Constitution for the State.

Mr. STRATTON offered the following amendment:

Strike out the word "five," and insert in place thereof "one from each judicial district."

Mr. POND — I accept that amendment.

Mr. GREELEY moved to lay the resolution upon the table.

Which was lost.

Mr. SILVESTER offered the following amendment:

Add, "And after the Convention has been in session at Saratoga two weeks, of adjourning to Niagara Falls, and after the Convention has been in session at Niagara Falls for two weeks, of adjourning to Lebanon Springs."

Mr. NELSON — I rise to a point of order, that the amendment offered by the gentleman from Columbia [Mr. Silvester] is not germane to the resolution, the resolution being for the appointment of a committee to consider the propriety of adjourning; the amendment proposes action for the Convention after they shall have reached Saratoga.

The PRESIDENT — The point of order is well taken.

Mr. SILVESTER — The Chair as I understand it decides my amendment to be out of order. It merely proposes an inquiry as to the expediency, as does the original resolution.

The PRESIDENT — The original resolution is simply for the creation of a committee.

Mr. SILVESTER — This is a proposition to amend by providing for an inquiry into the expediency of doing these things afterward.

The PRESIDENT — It is a different subject matter altogether in the opinion of the Chair.

Mr. GREELEY called for the yeas and nays upon the resolution. A sufficient number seconding the call, they were ordered.

Mr. BICKFORD — It seems to me the proposition for the adjournment of this body to Saratoga is one which this Convention should not entertain for a moment. In my view it is wholly preposterous for the resolution to be entertained at all. If the resolution has any definite object, it is not perfectly expressed in its present shape. It should specify, not merely the village of Saratoga, but should specify some place in Saratoga, some building, some hall or room where the sessions of this Convention could be held. It is not enough to provide for adjourning to Sara-



toga without we name some place there. It is well known that the place which has been proposed for the sittings of this Convention is an antiquated opera house—

Mr. SEAVER—I rise to a point of order, that the question before the Convention is upon appointing a committee, and does not involve the merits of an adjournment at all.

The PRESIDENT—The point of order is well taken; the gentleman from Jefferson [Mr. Bickford] will confine himself to the question of the expediency of raising a committee.

Mr. BICKFORD—Well sir, I deem it to be in order, with all respect to the President, to state that there is no convenient place at Saratoga, as we all know, or a proper place for holding the meetings of this body. We have here every facility for doing the business of this Convention. Provisions have been made for the accommodation of the members of the Legislature, and the same accommodations are afforded to us. It is here a cool and shady place—everything to our hand and ready for use, and if we go to Saratoga, it is preposterous to think that we shall find either the accommodations or the facilities for doing business that we have here. The people do not expect that we have come here for our own pleasure, or for our own convenience—but it is to attend to the business of this Convention,—to attend to public business, and it is perfectly obvious that we can do better here than in any other place.

Mr. KETCHAM—I rise to a point of order, that the gentleman's remarks are not germane to the subject. He is talking about what would be a very appropriate subject if the inquiry were before the Convention.

The PRESIDENT—The Chair has already informed the gentleman from Jefferson [Mr. Bickford], that he must confine his remarks to the expediency of raising this committee.

Mr. BICKFORD—If it would ever be proper to raise this committee, I think it is not proper to raise it now. It is a time of general health in Albany; there is no plague here [laughter] and no epidemic whatever, or anything of that kind. It might be very proper in case any disease were prevalent here that we should adjourn to some other place, but at the present time I think this is the proper place to stay; and, therefore, I hope the proposition will not be entertained at all.

Mr. DEVELIN offered the following amendment:

Insert after the word "Saratoga" the words "or the city of New York."

Which was adopted.

Mr. C. L. ALLEN—I move to postpone the further consideration of this resolution until the 9th day of July next. We shall then be in a better situation to consider the propriety of adopting this resolution than we are now.

Mr. POND—It strikes me, sir, if this committee is to be appointed at all, it should be appointed now—

The PRESIDENT—This motion is not debatable upon the main question, this being a motion to fix the time.

Mr. POND—I suppose that I am speaking to that point. I say that if the committee is appointed at all, it should be now, and not at the

future time suggested. In reply to the honorable gentleman from Jefferson [Mr. Bickford]—

Mr. MERRITT—I rise to a point of order that it is not in order to debate a motion to postpone.

The PRESIDENT—A motion to postpone, the Chair holds, is debatable, and this is a motion to postpone to a day certain; the motion to postpone is debatable, if the debate does not involve the main question.

Mr. POND—Upon that question the gentleman from Jefferson [Mr. Bickford] has suggested, that there is no epidemic here, and we ought to wait until that comes. I think myself, sir, that wisdom requires that the committee should be appointed, and should ascertain where, if anywhere, out of this city, a session of this Convention may be held, before the exigency is upon us; because, in all probability, if this Convention holds a session elsewhere than here, they will want to adjourn by the time named by the gentleman from Washington [Mr. C. L. Allen], to which he would have this question postponed. If this committee is appointed, they may be able to report a place to which the Convention may wish to adjourn by that time; and if there is any necessity for adjourning at all, that necessity will be apparent by the 9th day of July. Indeed, it seems to me, it would be proper for this committee to be appointed, and they might make a report before the adjournment over for the 4th of July, and then, if there is to be a session held elsewhere, there will be sufficient time in the interim between this time and the 8th or 9th of July, for the removal of everything that is necessary from this place to the place to which this Convention may see fit to adjourn. Therefore, it seems to me, to be the proper time to appoint the committee asked for in the original resolution; to which I supposed the amendment of my friend from New York [Mr. Develin], was not germane, according to the decision of the Chair upon a former amendment. But no matter for that. I don't think it will hurt this Convention to receive a report from the committee in reference to New York city as well as Saratoga Springs, and let the Convention say which one of the two places, if either, they will adjourn to.

Mr. MERRITT—It seems to me that the whole subject is pretty well understood; and in order to test the sense of the Convention, I move that it be indefinitely postponed, and on that I call the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Merritt, and it was carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Armstrong, Barker, Barnard, Barto, Beals, Bell, Bergen, Bickford, Carpenter, Case, Cassidy, Church, Conger, Cooke, Curtis, C. C. Dwight, T. W. Dwight, Ferry, Fowler, Fuller, Garvin, Goodrich, Gould, Grant, Greeley, Gross, Hadley, Hammond, Hand, Hardenburgh, Harris, Hitchcock, Houston, Hutchins, Kinney, Krum, Lapham, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Murphy, Paige, A. J. Parker, C. K. Parker, President, Prin-

dle, Rathbun, Reynolds, Root, Roy, L. W. Russell, Schoonmaker, Schumaker, Seaver, Silvester, Spencer, Stratton, Strong, Van Campen, Van Cott, Wales, Wickham—70.

*Nays*—Messrs. Alvord, Archer, Axtell, Beadle, Beckwith, Bowen, E. Brooks, E. P. Brooks, J. Brooks, Burrill, Champlain, Cheritree, Chesebro, Clark, Clinton, Cochran, Colahan, Corbett, Daly, Develin, Duganne, Ely, Endress, Field, Flagler, Folger, Francis, Frank, Fullerton, Gerry, Graves, Hatch, Hitchman, Huntington, Ketcham, Landon, Larremore, A. H. Lawrence, M. H. Lawrence, Livingston, Loew, Lowrey, Mattice, Monell, Morris, Nelson, Opdyke, Pond, Prosser, Robertson, A. D. Russell, Seymour, Sheldon, Tappen, M. I. Townsend, S. Townsend, Tucker, Veeder, Verplanck, Williams, Young—61.

Mr. GREELEY moved that the Convention do now adjourn.

Which was lost.

Mr. VAN CAMPEN called up the resolution offered by him yesterday in relation to an adjournment.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That when this House of Delegates adjourn on Friday next, they adjourn to meet on Tuesday, July 9th, at 11 o'clock A. M.

Mr. GRAVES—I wish to call up the resolution offered by me this morning, which I now offer as an amendment.

The SECRETARY proceeded to read the resolution as offered by Mr. Graves as follows:

*Resolved*, That this Convention keep an open session from Friday of this week until July 8th, to enable the committees to pursue their labors, and that during said time the Convention will not assemble daily at the Capital, but the members of the respective Committees will meet and compare views, or examine separately the subject-matter submitted to them, and report to this Convention in Committee of the Whole, at its session on Monday evening, July 8th, at 7½ o'clock, P. M., or as soon thereafter as consistent with their duties.

Mr. ALVORD—Mr. President: my experience in the past has been, that an adjournment, either in terms, or so understood to be in fact, results in a breaking up of the entire business of a legislative body. If we come to the conclusion to adopt the original resolution, it will adjourn the entire business of this Convention from Friday evening until the succeeding 9th of July. If we merely adopt the amendment offered here by the gentleman from Herkimer [Mr. Graves], it results in the same thing. Unless we come here together and meet in our daily sessions, and go through the ordinary forms, we shall, in fact and in truth, keep outside of doing anything during the entire of this interregnum. It suggests itself to me, as the best thing to do under the circumstances, that we should hold our usual sessions during this whole week and meet again on Monday and Tuesday, then adjourn on Wednesday, at as early an hour as gentlemen please, over until the next Monday. We shall lose no time in this way, and we shall be doing efficient work, laboring in the direction we ought to do, between the present time and the day of adjourning, just previous to the 4th of July, and in that way

shall lose less of the valuable time which ought to be employed here, than in any other method proposed. We have, it is true, but very little to do in our daily meetings here; but we have a vast work to do in the committees; and attempting to get around in any way the idea of an adjournment of the Convention, and keeping together the committees will be a failure. The committees will disperse the moment the Convention adjourns, either in terms or substantially, as contemplated by the amendment of my friend from Herkimer [Mr. Graves]. I hope this proposition, either of the amendment or of the original resolution, will not prevail.

Mr. MURPHY—I am opposed to this amendment for the reason that I would not do indirectly that which I would not do directly. I do not exactly understand, sir, what is meant by the term "open session" in this resolution, unless it means that there are to be no regular sessions of this body during the interval proposed. As I understand the resolution itself, this body is not to meet, and there is to be no session of this Convention, though the resolution says there shall be an open session in which the committees shall meet. If it be intended to get around the act which says that this body shall not take a recess for longer than three days, let us do it in an open and manly way. Let us adjourn over from Friday until Monday, as proposed by the original resolution. Certainly we are not in session when the committees are merely meeting; and there is no such thing as an open session. An open session of this Convention, I take it, is an open meeting of this Convention daily, as we are meeting now. I shall vote against this amendment for these reasons, reserving to myself the right to vote upon the original resolution as I shall deem proper whenever it may come up.

Mr. AXTELL offered the following amendment:

That when this House of Delegates adjourns on Wednesday, the 3d of July, it shall adjourn to meet at the usual hour on Friday, the 5th of July.

Which was lost.

Mr. ALVORD offered the following amendment:

That this Convention adjourn at 11½ A. M. on Wednesday next until Monday evening, the 8th day of July next, at half-past 7 o'clock P. M.

Mr. VAN CAMPEN—The members from the extreme part of the State cannot get here by Monday evening at half past 7 o'clock. If I start on Monday, it requires from my place more than twenty-four hours to get here, and I cannot, by any possibility, get here at the hour named in the resolution.

Mr. ALVORD.—I have no particular objection to saying Tuesday at 11 o'clock A. M.

Mr. RATHBUN.—I think that is no reason why we should not adjourn until Monday evening. The members who cannot get here by Monday afternoon will be able to reach here by the morning of the next day. I understand the objection to this amendment is that members cannot reach here, some of them by half-past seven in the evening. It is perfectly understood, I suppose, that when this Convention meets on Monday evening after the members return, that it meets in point of fact, merely to adjourn over until the



A. M., on Friday, next, until Tuesday, July 9th, at 11 o'clock, A. M.

Mr. SEAVER—I offer this amendment for the purpose of allowing members who reside in remote sections of the State to go to their homes. There are men here who cannot by any possible mode of conveyance reach their homes and return within the time prescribed by the amendment of the gentleman from Onondaga [Mr. Alvord]. I think this will commend itself to all members of the Convention.

The question was put on the amendment of Mr. Seaver, and it was declared to be lost.

Mr. HAND offered the following amendment:

That the Convention adjourn on Tuesday next, the 2d day of July, at 11½ o'clock A. M., until Monday, July 8th, at 7½ P. M.

The question was put on the proposed amendment, and it was declared lost.

Mr. BICKFORD—I do hope that we have passed the day of these long adjournments. This proposition is that the Convention shall adjourn from the day before the 4th of July until the following Monday. I do not think it is necessary we should adjourn for any longer time than until the Friday following. I do desire that this Convention should get at their work, and that the committees perfect their labors and bring their reports before this body at as early a day as possible. It is utterly impossible to get the committees to act unless the Convention shall continue in session. I, therefore, hope we shall not adjourn from Wednesday until Monday.

The question was then put on the amendment offered by Mr. Alvord, and it was declared adopted.

The question was then announced on the resolution of Mr. Van Campen, as amended on the motion of Mr. Alvord.

Mr. CONGER—I hope that this resolution will not prevail. I think the Convention owes something to its own sense of dignity and propriety. We have had three recesses under the law which has saved the per diem allowance of every member of the Convention, and of the clerks and officers. The object of the law was two-fold: to insure the Convention attending to its business so as to present a Constitution to the people at an early day for its approval, by providing that in case of a recess of more than three days, the per diem should be forfeited, and to give the members of the Convention an opportunity to adjourn when there was a necessity, and, at the same time, save the amount of that per diem to the general fund appropriated. Now, it seems to me, that if, with a view of adjourning to celebrate the national anniversary, we virtually say to the people that we will adjourn so as to save our per diem for three days, we will bring upon ourselves a great deal of reprobation—I will not say contempt. The recesses that we have already taken under the act has cost the State some \$10,000, which has had to come out of this appropriation. Each day's session costs the State \$960 for the members and probably from \$75 to \$100 in addition for the officers of the Convention. Now we cannot, with any sort of consistency, it seems to me, say that we will adjourn from Wednesday morning at half-past eleven o'clock, and go home and cele-

brate the 4th of July, when very few members of this Convention can get to their homes in time to celebrate the event. I hope, therefore, that the Convention will reconsider the last vote, and will adjourn in a manly, straightforward manner, return to their homes, celebrate the anniversary, and then return to do the work that is intrusted to them.

Mr. RATHBUN—I do not understand that that adjournment saves the per diem to members. I understand that an adjournment from Wednesday to Monday embraces four full days, and that the per diem, as a matter of course, will be lost to members. It seems to me that the gentleman [Mr. Conger] has made a mistake.

Mr. CONGER—The 4th of July is a *dies non*, and of course is not to be counted in the adjournment. If we adjourn on Wednesday, we will then have Friday, Saturday and Monday, which will be but three days' adjournment to be counted.

Mr. RATHBUN—I doubt very much whether the gentleman is right in reference to that provision. By the law, delegates are entitled to a per diem compensation for every day; but if the adjournment exceeds three days—it does not say legislative days—they receive no compensation for the time. Sunday is equally *dies non* as well as the 4th of July, and yet we are paid for Sunday and if we remain here, we will be paid for the 4th of July, though we may not be in session. By an adjournment from Wednesday until Monday we go over the three days, and of course it would exclude payment.

Mr. McDONALD—I offer an amendment, simply with the view of allowing every person to get home to be present at the celebration of the 4th of July, and to return in time to attend the sessions of the Convention.

The SECRETARY proceeded to read the amendment, as follows:

*Resolved*, That this Convention, when it adjourns on Tuesday, July 2d, it adjourns to Tuesday, July 9th, at 11 o'clock.

The question was then put on the amendment of Mr. McDonald, and it was declared lost.

The question then recurred on the original resolution of Mr. Van Campen as amended, on the motion of Mr. Alvord, and it was declared adopted.

Mr. C. C. DWIGHT offered the following resolution:

*Resolved*, That the Standing Committee on the Right of Suffrage be instructed to inquire as to the expediency of providing by constitutional amendment, as follows, viz.:

That the Legislature, at its first session after the adoption of this Constitution, shall provide by law.

1. For an accurate enumeration to be made of all citizen females in this State above the age of 21 years.

2. For an election to be held as soon as practicable after the completion of such enumeration, at which election only citizen females above the age of 21 years shall be entitled to vote, upon the question "shall the right of suffrage be extended to females?" Yes or no. And that if the number of votes in the affirmative, cast at such election, shall be a majority of the whole number of



citizen females shown by the enumeration aforesaid, then, and from that time forth, the right of suffrage shall be secure to all citizen females of this State, above the age of 21 years.

Which was referred to the Committee on the Right of Suffrage.

Mr. M. I. TOWNSEND—I call up for consideration the resolution offered by the gentleman from Westchester [Mr. Greeley], to return the communication of the Commissioners of the Canal Fund to that committee.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the report of the Commissioners of the Canal Fund, made to the Convention, on the 19th inst., be respectfully returned to them, with the request that the information sought in the resolution of 11th inst. be communicated to the Convention at as early a day as possible.

Mr. M. I. TOWNSEND—I now offer the following substitute for the motion of the gentleman from Westchester [Mr. Greeley].

The SECRETARY proceeded to read the substitute, as follows:

*Resolved*, That the Auditor of the Canal Department be requested to prepare and communicate to this Convention a tabular statement, showing:

1. The original cost of the several canals of this State, including that of any enlargement or extension thereof.

2. The aggregate cost of each canal as aforesaid, including superintendence, repairs and legal interest on the cost of construction, up to the close of the last fiscal year.

3. The aggregate receipts or income from each canal, computed in like manner.

4. The net cost or profit of each canal up to the close of the last fiscal year.

5. The annual receipts or income of the State from each canal, with the annual cost of superintendence and repairs, respectively, of such canals up to the close of the last fiscal year.

6. Also a table which will show with how much each so called lateral canal should be credited for its contributions to the revenues which in the yearly official tables and reports are credited to the Erie canal.

Mr. M. I. TOWNSEND—The resolution which has just been read I offer as a substitute for the pending resolution of the gentleman from Westchester [Mr. Greeley], as amended upon the suggestion of the gentleman from Rockland [Mr. Conger], that the communication of the Commissioners of the Canal Fund be returned to them with a request that they furnish the information called for at as early a day as possible. The proposed substitute is the original resolution offered by the gentleman from Westchester [Mr. Greeley], with the addition of the amendment offered by the gentleman from Ontario [Mr. Folger], and accepted by the mover; so that the proposition now stands as it was originally before the Convention, before it was amended upon the suggestion of the gentleman from Richmond [Mr. E. Brooks], which amendment provided in substance that the information called for should be furnished unless it had been otherwise communicated. Sir, I desire to be possessed of precisely the information

called for by the original resolution offered by the gentleman from Westchester [Mr. Greeley], and in the form asked for by that gentleman. There can be no difficulty in directing this inquiry to the Auditor of the Canal Department, for however much we might have been in doubt at the commencement of this discussion upon this subject as to what officer or officers were possessed of the information which we desire, the debate that has been had has brought out the fact that, as the law now stands, the Auditor of the Canal Department is in possession of all the information which we seek.

Mr. GREELEY—In order to save time and debate, I accept the substitute proposed by the gentleman [Mr. M. I. Townsend].

Mr. M. I. TOWNSEND—I am obliged to the gentleman from Westchester [Mr. Greeley], for his suggestion, but I desire to pursue the remarks I was making, not for the interest of that gentleman merely, but because there are other gentlemen upon this floor who may be called upon to vote upon this subject, and for that reason I will continue, I trust, without making myself burdensome to the Convention. By the statutes which have been referred to, the Auditor of the Canal Department has been given control over the records in his possession. He can furnish us with the information. I desire to pass this resolution without the amendment offered by the gentleman from Richmond [Mr. E. Brooks], and adopted by the Convention, for this reason: certain members upon this floor, and I include myself among the number, would like to see this matter in a tabular statement, where it is all together and all digested. If the information is already communicated to this body, if it is already in print, or if it is already executed and ready to send here, it cannot impose any considerable labor upon the Auditor of the Canal Department to write it again and let us have it here in a shape that there can be no cavil about. I am particularly desirous because there has been much said about the subject of the canals, and I am unable to tell, in the present state of my information, whether it is correctly said or not. I think if we get this information we shall not be laboring under the difficulty which one gentleman seemed to labor under this morning, who said that it was a real grievance to the people of this State that the members of this body did not understand canal matters; and really we ought to understand them, and relieve the people of this State from the grievance.

Mr. HATCH—I offer an additional amendment.

Mr. FULLER—I rise to a point of order. The gentlemen from Westchester [Mr. Greeley], accepted the substitute of the gentleman from Rensselaer [Mr. M. I. Townsend].

Mr. GREELEY—I accepted it to save the time of the Convention.

The SECRETARY proceeded to read the amendment offered by Mr. Hatch as follows:

*Resolved*, That the Auditor of the Canal Department be requested to communicate to this Convention, the amount of revenues of the Erie canal which has been appropriated for construction and maintenance of lateral canals, and also the amount of decrease in the revenues of the Erie canal, an-

nually and in the aggregate, caused by the diversion of its business by either of the lateral canals with the interest thereon, to the close of the fiscal year.

Mr. GREELEY—I accept the amendment.

Mr. E. BROOKS—I am very glad that the resolution originally introduced by the gentleman from Westchester [Mr. Greeley] has assumed the form it has. It was by my motion that the resolution was addressed to the Auditor of the Canal Department. The original mover of the resolution [Mr. Greeley] insisted that it should be addressed to the Comptroller. On the motion of the gentleman from Orleans [Mr. Church], my amendment was amended so as to call for the information upon the Commissioners of the Canal Fund. Now, sir, in vindication of my original motion, which has been the subject of incidental debate for some five days, I wish to say a few words, and especially in reply to the gentleman from Rockland [Mr. Conger]. Sir, I maintained this, and I re-affirm it now, that, by law, the Auditor of the Canal Department is the only proper person to call upon for information in regard to the administration of the canals; that by law of the State he is the secretary of the Canal Board and of the Commissioners of the Canal Fund; that by law, he is placed in custody of the entire official and unofficial papers of the two Canal Boards; that by law, all the powers originally residing in the Comptroller of the State, so far as respects the canals, are vested in him; and that by law, also, the Commissioners of the Canal Fund and the Canal Board are obliged to report to the Auditor of the Canal Department; and further, that by law, the Auditor of the Canal Department is obliged to report to the Legislature as a State officer, and to make up and prepare and give the only information which can possibly or properly be presented in regard to the canals to the Legislature of this State. I desire, in vindication of that which has been criticised on this floor to read a brief section from the law itself, which my friend from Rockland [Mr. Conger] says has not been repealed. It says:

"The accounts of receipts and payment on account of the canals, and of the canal fund and debt, heretofore kept by the Commissioners of the Canal Fund, shall, on and after the first day of October next, be kept by the Auditor."

It also says:

"On and after the first day of January next, the Auditor of the Canal Department, in addition to his present powers and duties, shall be a member of the Contracting Board, created by chapter three hundred and twenty-nine of the Laws of eighteen hundred and fifty-four, in the place and stead of the Comptroller, and be invested with all the powers, and perform all the duties, and be subject to all the responsibilities now conferred by law upon the Comptroller as a member of such Contracting Board, and from thenceforward such Contracting Board shall consist of the Canal Commissioners, the Auditor of the Canal Department and the State Engineer and Surveyor."

And, finally, to meet the second proposition which was made by the gentleman from Rockland [Mr. Conger] in reply to the gentleman from Ulster [Mr. Schoonmaker], it says:

"The annual report and statement required by the fourteenth section of the act, chapter, one hundred and sixty-two, of the Laws of eighteen hundred and forty-eight, to be made by the Auditor to the Commissioners of the Canal Fund, shall hereafter be made to the Legislature, and shall embrace all the particulars heretofore required in the annual report of the Commissioners of the Canal Fund."

Sir, enough in vindication of the original motion I made to the Convention. Now, let me say in regard to the resolution which has been moved by the gentleman from Rensselaer [Mr. M. I. Townsend], that if he will examine the second pamphlet which has been laid before us, he will, with very little labor—hardly five minutes—find the information given in the general and in the detail in regard to every canal in this State, its cost, the original expense of conducting it from its original working and establishment, until the present time. And, as I have said upon more than one occasion, we are imposing an herculean task upon the officers of this Convention, and upon the State officers, in compelling them to look up information which lies upon our table, if we will only take the trouble to read it.

Mr. PROSSER offered the following amendment:

*Resolved*, That in making up the accounts of the separate canals, the interest upon the cost, and upon the receipts and expenses, up to the close of the last fiscal year, shall be computed at the rate of five per cent compounded annually.

Mr. GREELEY—I accept the amendment.

Mr. HATCH—It seems to me that the Secretary has omitted to read a resolution, which I introduced the other day, of inquiry, which was added to the resolution of the gentleman from Westchester [Mr. Greeley]. I will offer it now as a new amendment.

The SECRETARY proceeded to read the proposed amendment of Mr. Hatch, as follows:

7. And also the amount of outstanding canal debt, and when due, and when the same would be paid, assuming, as a basis of calculation for the future revenues of the toll receipts, the revenue from the same source for the last seven years.

Mr. GREELEY—I accept the amendment, but I trust that the Auditor will not be detained by these complicated calculations so long as to fail to give us the information we desire.

Mr. CONGER—I regret extremely sir, that the remarks I made the other day in regard to the proper functions of the Commissioners of the Canal Fund should have been so construed as to make it appear that the Auditor had no functions whatever under the existing laws. It is useless at this time to refer to that series of changes in the laws passed by the Legislature, which, originating in the dethronement of the Commissioners of the Canal Fund, forced an enlargement policy on the State, and eventuated in the passage of the nine million law of 1851. It is a matter of historic record, which is not necessary to be introduced here at this time, more than for this allusion, that the dethronement at that time, undertaken under the law of 1848, by which the chief clerk of a department was made to supersede in functions the

members of that department, carried with it all the necessary consequences of an attempt, if not to violate the Constitution, at least, to change its fair purport and meaning. Now, I showed, I think conclusively, the other day, that the law under which the Commissioners of the Canal Fund were to report to the Legislature, was not changed, and the only pretense that that law has been repealed is in the section that was added to the law of 1861, that the Auditor was to present the report to the Legislature directly, instead of presenting it to the Commissioners of the Canal Fund. There is this difference between the report of the Commissioners of the Canal Fund and the report of the Auditor, commonly known as the financial report: the Commissioners of the Canal Fund have the general charge and oversight of the whole subject; not merely that subdivision, which is known as the financial report of the Auditor but also the custody, control, management and recommendations in regard to the disposition of the canal funds. Now lest gentlemen may seem to think that I was led astray by a reminiscence of a quasi political revolution, I refer them to this, that when we first convened here, there were laid on our tables copies of a report of the Commissioners of the Canal Fund, in answer to a resolution of the Senate, relative to the enlargement of the locks on the Erie and Oswego canals. There was a resolution of the Senate requiring them "to report to what extent the cost of enlarging the locks of the Erie and Oswego canals, on the plan and estimate submitted by the State Engineer and Surveyor, can be made a charge on the future revenues from the said canals, without interfering with the prior claims on the said revenues created by the Constitution." Therefore it will be seen that, although it is conceded that the Auditor, now no longer chief clerk, but the financial officer, is empowered by law to present statistical information to the Legislature, known as the financial report, the Senate of 1867, on the very question that is to engage the attention of this body, referred that subject to the Commissioners of the Canal Fund directly, irrespective of the functions of the Auditor of the Canal Department which had by successive laws been gradually increased until, I concede, it was doubtful whether the Auditor had charge of the canal funds, or the Commissioners themselves. I am not willing to seem to take the position of splitting hairs on this or any other question. I am perfectly willing that every reference made by this Convention for statistical information on single or individual subjects, connected with the canals, should go to the Auditor. But when there is any subject presented which directly or indirectly has reference to the subject of the proposed enlargement, then I wish the information to be obtained from the Commissioners of the Canal Fund, and I quote for the gentlemen who opposed me on this ground, the precedent of the Senate, which passed the resolution in reference to this measure.

Mr. E. BROOKS—Let me say that by the law, the Canal Commissioners are obliged to report to the Auditor all the information in their pos-

session, in regard to the administration of the canals.

Mr. CONGER—I would like to have the gentleman show me the section of the law.

Mr. E. BROOKS—It was cited by the gentleman from Ulster [Mr. Schoonmaker], in his remarks the other day, in reading the judgment of the Court of Appeals, and I will read an extract from that decision again; but before I do so, allow me to say to the gentleman, that not only are the Canal Commissioners to report to the Auditor, but the Auditor has the power of removing every superintendent on the canal for cause, and that the Auditor of the Canal Department, alone, has the power to draw warrants.

Mr. CONGER—I am only speaking in reference to the Commissioners of the Canal Fund, and not of the canals.

Mr. E. BROOKS.—The Canal Commissioners are obliged to report to the Auditor.

Mr. CONGER—Does the gentleman from Richmond [Mr. E. Brooks] mean to say that the Auditor has the power of removing the Commissioners of the Canal Fund?

Mr. E. BROOKS—No, but he has the power of removing canal superintendents.

Mr. CONGER—I shall probably fail to convince the gentleman of the valid distinction on this subject recognized by law and by the practice of the Legislature. That the Auditor has certain powers conferred upon him I do not deny. Will the gentleman maintain that these powers have been so accumulated in the Auditor's department that the Commissioners of the Canal Fund have no longer any constitutional power? Because, if they have no power to do anything under the Constitution, they virtually have been removed from office. But I contend that they have powers. What is the power vested in them as distinguished from the power vested in the Auditor of the Canal Department? I do not deny that the Auditor has certain powers under the law to make reports to the Legislature; but when we come to the Convention which is to revise the Constitution, we are acting under the Constitution, and are in a measure superior to all the laws passed by the Legislature on this subject. We have a right to recognize the original appointees under the Constitution of 1846, who are charged with the information we desire. But, as I have said before, I am willing to take this distinction, and ask the Auditor to give us the specific information on any one particular branch of the canal service. But when it comes to a series of propositions, which by their scope and meaning include a review of the whole subject of the canal funds and the management of the canals, I insist upon it, that by law and by practice, we should refer those questions to the Commissioners of the Canal Fund. I have before me a statement of the whole progress of the law on this subject. I will not detain the Convention by reading it, but will allow it to be incorporated in the printed report of my remarks. If any one will take the trouble to examine the legislation from the Revised Statutes, down through the Laws of 1831, and the Laws of 1841, to the present time, I think he will not fail to



arrive at the conclusion that there still exists between the functions of the Auditor and the Commissioners of the Canal Fund, a valid and essential distinction and difference. The gentleman from Richmond [Mr. E. Brooks], supposes that we are concluded by the decision of the Court of Appeals. I endeavored to show very briefly, when speaking on this subject, that that decision was only in a case between the Auditor and the Comptroller, as to which was the financial officer of the canals, and had nothing to do with this subject. But I dislike very much to tire the Convention. I do not desire to vindicate my own position or opinion, but when it was so promptly and almost universally affirmed that I had mistaken the law and overlooked the amendment of 1861, I felt that I was bound, and that it was my duty to bring to the notice of the Convention the act of the Senate of 1867, by which they referred this question of enlargement which has to come before this Convention, to the Commissioners of the Canal Fund. If my position is now understood, I hope it will not be questioned again for I am willing to refer each specific information sought for from each canal to the Auditor. I did not object to the motion of the gentleman from Clinton [Mr. Beckwith], this morning when he wished to get information in regard to the Champlain canal. I am willing that every information asked for in reference to each one of these canals shall be got from the Auditor; but when it comes to a complicated series of propositions which has no other reference than to the matter which was referred to this Convention by the last Legislature, to wit, the subject of the enlargement of the canals, I think the information ought to come from the Commissioners of the Canal Fund.

The following is the statement alluded to by Mr. Conger in his remarks:

The whole administration of the canal fund was, by the Revised Statutes, and earlier, vested in the Commissioners of the Canal Fund, who were also directed to recommend to the Legislature all measures which they might deem proper for the improvement of the fund; and also to report to the Legislature at the opening of each session, the condition of the fund. 1 N. Y. Statutes at Large (Edmonds' ed.), 193; section 5 and others.

Under this provision of law the Commissioners were accustomed to make an annual report, which was known as their Financial Report.

Under section 27 of chapter 320 of the Laws of 1831, they were also accustomed to make another annual report, which was known as their Statistical Report.

By section 12 of chapter 288 of Laws of 1840, the Commissioners were authorized to appoint a chief clerk; which office was substituted for that of Second Deputy Comptroller; and this officer was also made chief clerk of the Canal Board.

By chapter 162 of the Laws of 1848, the office of Auditor was made, and that of chief clerk of the Canal Department abolished, and the Auditor was vested with all the powers and duties of the chief clerk of the Canal Department, and of the Comptroller in relation to the canals, except as a Commissioner of the Sinking Fund; and the Auditor

was made Secretary to the Commissioners of the Canal Fund, and also the Canal Board.

By section 7 the form of the statistics on tolls and tonnage report was regulated, and it was required to be made direct to the Legislature.

By section 14 the Auditor was required to make a statement to the Commissioners, which was substantially their financial report; and this statement was required to accompany the annual report of the commissioners to the Legislature.

By chapter 177, of the Laws of 1861, the said statement of the Auditor was required to be made to the Legislature.

The books and papers pertaining to the duties of the Auditor, or to the duties of the commissioners, were required to be deposited in the Canal Department; and to be securely and safely kept by the Auditor; and the appointment of the clerks was transferred from the commissioners to the Auditor.

But there is no change in the laws originally prescribing the general powers and duties of the commissioners; nor is even the clause requiring an annual report of their doings repealed. The subsequent provisions requiring that report from their secretary may be construed to satisfy that requirement, on the theory that the Auditor in making it, acts in his capacity as their secretary. The books pertaining to their duties, though in his custody, are their books; and not only have they access to them and control of them for the purpose of discharging their duties, but their secretary must be deemed subject to their call for any information contained in those books which they may deem necessary for the performance of their duties.

The information called for by the Convention, on the motion of Mr. Greeley, is wholly distinct from the two annual reports, the duty of preparing which is by law specially imposed on the Auditor. It relates to the exact duties of the commissioners, in the fiscal administration of the Canal Funds; and calls for a statement of the fiscal results of these works from the beginning of the system, when the fund was placed under the management of the commissioners.

Mr. S. TOWNSEND — Mr. President, I fully agree with the gentleman who has just taken his seat [Mr. Conger], as to the complicated nature of the amendments that we are piling upon the original resolution offered by the gentleman from Westchester [Mr. Greeley] who has, with the greatest readiness accepted everything which has been proposed. I would ask the gentleman from Erie [Mr. Hatch] if his amendment goes to the extent of asking the Auditor to compute the probable loss to the Erie canal, from competing lateral routes?

Mr. HATCH — The inquiry was made as to the amount of revenues or tolls, which the lateral canals had contributed to the Erie canal. I wanted both sides of the account, and to show how much money the Erie canal had contributed to the maintenance and cost of these lateral canals, and also the decrease in revenues by the diversion of business through these lateral canals.

Mr. S. TOWNSEND — Then Mr. President, it is evident, that in the midst of such a labyrinth of inquiries the Auditor could not complete and



furnish his answers before the first of September, by which time, whatever we may have to propose, should be placed before the people for their consideration, if we expect them to act with deliberation upon the questions presented for their review. Again, running through a long series of years, as these queries do, how is the Convention to act understandingly in regard to the answers that may be returned, unless the figures shall be reduced to the actual value of the currency dollar, from time to time, ranging as it has done from 100 cents to 35 or 70 cents,—its present rate. To do this—if the Auditor does not anticipate the dilemma in advance—the members of the Convention will have to take pen and paper, or slate and pencil and “cipher it out.” I have already alluded to this fact, when speaking a few days ago, of the apparent net canal revenues, which, as compared to those of twenty years since (some four millions in specie) were now, at the same amount in currency, in reality some \$1,500,000, less, although many millions, have in the interim, been expended on the enlargement and improvement of most all of the canals. The gentleman from Richmond [Mr. E. Brooks] has stated more than once, that all the information sought for in these resolutions, which have consumed so much of our time, is already before the Convention in one form or another. I think that but little good can come from all these inquiries, and though I should hesitate to move to lay any gentleman's resolution of inquiry on the table, yet I would suggest to the gentleman from Westchester [Mr. Greeley], who has already in several instances consented to a delay, that he should allow this resolution to be postponed for a time, or for another day at least.

Mr. GREELEY—No; I want the information in any way, and as soon as I can get it.

Mr. HITCHMAN—This question seems to me is so loaded down with propositions that I am fearful that the whole matter will go over to so late a date that it will be impossible to receive the information in time to act intelligently upon it. I would therefore move that a division of the vote be had, upon the questions, and that we first take the question upon the resolution presented by the gentleman from Rensselaer [Mr. M. I. Townsend].

Mr. E. BROOKS—Believing that all the important information in regard to the matter, is contained in the pamphlet upon our tables, I move that the whole subject be laid upon the table.

The question was put on the motion of Mr. E. Brooks, and was declared lost.

The PRESIDENT announced the question to be on the substitute offered by Mr. M. I. Townsend, and accepted by Mr. Greeley.

Mr. SCHOONMAKER—I would like to call the attention of the gentleman from Rensselaer [Mr. M. I. Townsend], to this fact—that interest is called for only on one side of the account, by his resolution. It calls for interest upon the cost of construction and not for interest upon receipts. I move to amend the third subdivision, by adding thereto the words “and legal interest thereon up to the close of the last fiscal year.”

Mr. GREELEY—I accept the amendment.

The question was then put on the substitute offered by Mr. Townsend, and accepted by Mr. Greeley as amended, and it was declared adopted.

The SECRETARY then proceeded to read the amendment of Mr. Hatch as follows:

7. And also the amount of outstanding canal debt, and when due, and when the same would be paid, assuming, as a basis of calculation for the future revenues of the toll receipts, the revenue from the same source for the last seven years.

Mr. HITCHMAN—I think that the subordinate propositions, Mr. President, might be put to vote together, and not separately.

Mr. M. I. TOWNSEND—I very much desire that this proposition may go unincumbered to the Auditor. I am entirely willing to vote for the propositions and amendments offered by gentlemen to this, but I would consider it a very great favor if they would put their propositions in the form of separate resolutions, as I think we will get an earlier answer to the inquiry contained in the original resolution than if the request was coupled with the other requests named.

The question was then put on the amendment of Mr. Hatch, and it was declared adopted.

The SECRETARY then proceeded to read the remaining amendment proposed by Mr. Hatch as follows:

*Resolved*, That the Auditor of the Canal Department be requested to communicate to this Convention, the amount of revenues of the Erie canal, which has been appropriated for construction and maintenance of lateral canals, and also, the amount of decrease in the revenues of the Erie canal annually, and in the aggregate, caused by the division of its business by either of the lateral canals, with the interest thereon, to the close of the fiscal year.

Also the amendment proposed by Mr. Prosser, as follows:

*Resolved*, That in making up the accounts of the separate canals, the interest upon the cost, and upon the receipts and expenses, up to the close of the last fiscal year, shall be computed at the rate of five per cent compounded annually.

The question was then put on the two amendments, and they were declared lost.

Mr. KINNEY offered the following amendment to be added to the last proposition:

“And that the Auditor be requested to report upon the several propositions of inquiry in their order, and as soon as each answer be completed.

The question was put on the amendment of Mr. Kinney, and it was declared adopted.

The question then recurred on the adoption of the substitute of Mr. Townsend, as amended by Mr. Greeley's resolution, and it was declared adopted.

Mr. VAN CAMPEN—I desire to call from the table a resolution offered by me yesterday, asking information from the State Engineer and Surveyor.

The SECRETARY proceeded to read the resolution as follows.

*Resolved*, That the State Engineer and Surveyor be requested, at his earliest convenience, to furnish in a tabular form, from the reports of the railroad companies of the State, from the 30th day of September, 1850, to the 30th day of September, 1866,

kinds in pursuance of section 31, of chapter 140 of the Laws of 1850, for the use of this House of Delegates, the total amount of freight in tons of 2,000 lbs. carried over each road, the number of tons carried one mile, with the amount of each kind of freight classified.

The question was then put on the resolution of Mr. Van Campen, and it was declared adopted.

On motion of Mr. BERGEN, the Convention adjourned.

#### THURSDAY JUNE 27, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. H. N. Pohlman.

The Journal of yesterday was read by the Secretary.

Mr. HATCH — There were two resolutions presented by me yesterday, and as I understand it, they were both adopted. I do not understand from the reading of the journal that the second one was adopted.

The PRESIDENT — The Secretary will read the journal as it stands.

The SECRETARY proceeded to read the portion specified, showing the second resolution to have been lost.

There being no further objection to the journal it was declared approved.

The PRESIDENT announced the assignment of the following reporters, to seats on the floor of the Convention.

REPORTERS. — G. W. Demers, J. Wesley Smith, J. F. Mines, Nathan Comstock, J. C. Fitzpatrick, Hiram Calkins, H. J. Hastings, Chas. E. Smith, Geo. W. Bull, A. Wilder, M. H. Northrup, A. G. Johnson, C. B. Martin.

Mr. SMITH — I have the honor to present for the consideration of the Convention, a memorial of the surviving veterans of 1812, through their representative and commandant, Gen. Van Rensselaer of this city. It prays for a constitutional provision, making it obligatory upon the Legislature to provide for the payment of certain claims for clothing and contingent expenses, incurred by them while in the service of the country during the war. It appears from the paper and the accompanying documents that in the month of April, 1812, Congress passed a law authorizing the President to call out the militia of this State and order them into service for six months, at a compensation of eight dollars a month, without any bounty or any allowance for clothing. A large proportion of those called out in this manner, were poor men, wholly dependent upon their daily labor for the support of themselves and families, and this pittance allowed by Congress was found wholly inadequate to their necessities; but serve they must, and serve they did, cheerfully and faithfully, eking out the means of subsistence for themselves and families, and providing for clothing and contingent expenses as best they could. Since the close of the war, the State through the Legislature has on several occasions recognized the existence and justice of these claims, and has adopted measures looking to their payment; but for causes which it is not necessary

here to mention, these measures have failed to secure the objects proposed by them.

The PRESIDENT — Will the gentleman suspend a moment. Is the gentleman from Fulton, [Mr. Smith] stating the substance of the memorial?

Mr. SMITH — I am.

The PRESIDENT — The gentleman will proceed then.

Mr. SMITH — I will detain the Convention but a moment. In 1859, a law was passed appointing a commission, composed of the adjutant-general and inspector-general of the State, to audit these claims. That commission proceeded in the discharge of its duties, audited about 17,000 claims, and issued, in pursuance of the provisions of the act, certificates of indebtedness, which these claimants and their representatives now hold against the State. It is claimed by the memorialists that if the State could be sued in a court, the whole of these claims might be enforced, and it is thought that a sovereign State ought to do voluntarily and cheerfully, what an individual under similar obligations, could be compelled to do by process of law. These men, in the hour of our peril, bravely defended our soil and our property, and upheld the honor of our flag; we are to-day reaping the fruit of their toil and their sacrifices, and we cannot afford to do them injustice. Our opportunity, sir, will soon be lost. Of 63,000 only about 1500 remain, and the youngest of those has already filled up the measure of the allotted period of man's existence. Whether this is the proper body to afford the relief, is for the Convention to decide, but it seems to me under the circumstances it cannot do less than respectfully receive and consider their memorial. I move therefore its reference to the Committee on Finance.

The memorial was referred to the Committee on the Finances of the State.

Mr. TUCKER — I wish to present two petitions of citizens of the State of New York, praying for an equal right of suffrage to both men and women.

The petitions were referred to the Committee on the Right of Suffrage.

Mr. ANDREWS — I have a memorial of Mrs. C. B. Sedgwick, and seventy-two other petitioners, principally ladies, residents of Syracuse, praying that the Constitution of this State may be so amended, as to secure the right of suffrage to women as well as men, on equal terms. I ask that it may be received and referred to the Committee on the Right of Suffrage.

The petition was referred to the Committee on the Right of Suffrage.

Mr. BURRILL — I have a communication, sir, from one of the justices of the Supreme Court, making suggestions in regard to the proposed amendments for the re-organization of the judiciary. I move it be received and referred to the Committee on Judiciary.

The communication was referred to the Committee on Judiciary.

The PRESIDENT presented the following memorial.

The SECRETARY proceeded to read the memorial as follows:

NEW YORK, JUNE 25, 1867.

Hon. WM. A. WHEELER, President of the Constitutional Convention :

*Dear Sir*—At a meeting of the 18th Assembly District Union Republican Association, of the city of New York, held on Monday evening, June 24, the following preamble and resolution was unanimously adopted, and ordered to be sent to you for presentation to the Convention.

Yours, respectfully,

C. PULLMAN, *President.*

GEO. F. COACHMAN, *Secretary.*

WHEREAS, One of the fundamental principles of our system of government is the right of men as individuals, to worship God in any form, or not at all, as they think proper, and

WHEREAS, Such a principle means that the people should not be taxed for the support of any religion or creed, and

WHEREAS, In violation of this principle, the Legislature and the common council of this city, have from time to time donated money from the public treasury for the benefit of particular sects and religions, therefore

*Resolved*, That this association respectfully request the Constitutional Convention now in session at Albany, to have a provision inserted in the Constitution, prohibiting the Legislature or any public body from donating any of the public property for the benefit, directly or indirectly, of any creed or religious sect.

The PRESIDENT—If there is no objection this will be referred to the Committee on Charities and Charitable Institutions.

Mr. DEVELIN—Mr. President:—Is that a proper reference for the memorial? Ought it not go to the Committee on the Powers and Duties of the Legislature.

The PRESIDENT—The Chair will entertain any motion for the reference of the memorial.

Mr. DEVELIN—I make that motion, that it be referred to the Committee on the Powers and Duties of the Legislature.

The question was put on the motion of Mr Develin, and it was declared to be carried.

Mr. PAIGE—I have in my hand a communication, requesting a reference to the appropriate committee, with regard to the expediency of amending the Constitution so as to require the general and local officers elected, or appointed to any office in the State, to take an oath, a copy of which accompanies the communication. This is properly referable to several Committees, but I move its reference to the Committee on the Right of Suffrage, and the Qualification to hold Office.

Mr. M. I. TOWNSEND called for the reading of the memorial.

Mr. PAIGE—It is not exactly in the nature of a memorial, but is a communication addressed to me, containing the form of an oath.

The SECRETARY proceeded to read the communication, which was referred to the Committee on the Right of Suffrage.

Mr. SPENCER, from the Committee on the Preamble and Bill of Rights, made the following report:

The Committee on the Preamble and Bill of Rights, having had under consideration the sev-

eral provisions of the same, as contained in the present Constitution, respectfully report:

That, in the opinion of the Committee, section 9 of article 1, reading as follows: "The assent of two-thirds of the members elected to each branch of the Legislature, shall be requisite to every bill appropriating the public moneys or property for local or private purposes;" and all that part of section 10 of said article reading as follows: "nor shall any divorce be granted otherwise than by due judicial proceedings, nor shall any lottery hereafter be authorized, or any sale of lottery tickets allowed within this State," do not properly belong to the subject which has been referred to them.

They therefore ask to be discharged from the further consideration of those provisions, and that the same, together with so much of the resolution of Mr. Bickford, adopted June 19, 1867, as relates to section 9, be referred to Committee No. 3, "on the Powers and Duties of the Legislature, except as otherwise referred."

And, inasmuch as a standing committee has been provided [No. 22], "on the relations of the State to the Indians residing therein," and the report of the Secretary of State, in answer to a resolution of inquiry in regard to their numbers, lands, etc., has been referred to that committee, it is also the opinion of this committee, that section 16 of said article more appropriately belongs to, and may be considered by that committee.

This committee therefore respectfully ask that they may be discharged from the further consideration of said section 6, and that the same may be referred to the Committee No. 22, "on the relation of the State to the Indians residing therein."

By order of the Committee.

GEO. T. SPENCER.

The PRESIDENT—The Chair would inform the gentleman from Steuben [Mr. Spencer], that under rule 16, a portion of this report will necessarily go to the Committee of the Whole, and that the question will have to be divided, being first taken on the first part of the report.

Mr. SPENCER—I have no objection to that, sir.

The PRESIDENT—The first part of the report will be referred to the Committee of the Whole, and the question is upon agreeing to the remainder of the report of the committee.

Mr. VERPLANCK—I hope, sir, it will all go to the Committee of the Whole. This section in reference to the Indians has always been incorporated in the Bill of Rights.

Mr. SPENCER—The object of this report is to have various subjects which are before the Convention so classified and so considered by each appropriate committee, that no one committee, will be under the necessity of reporting something which has been considered and reported upon by another committee.

Mr. CONGER—May I ask the President what rule this is?

The PRESIDENT—Rule 16 provides that all reports embracing proposals for constitutional alterations, shall be referred to the Committee of the Whole.

Mr. CONGER—I would respectfully suggest that this is a resolution to refer a subject, not on its

merits, but simply to refer it to another committee.

Mr. SPENCER—The report asks that this committee be discharged from the further consideration of these provisions named, and that they be referred to the appropriate committees.

The PRESIDENT—The Chair misunderstood it, by simply hearing a portion.

The question was then put upon agreeing to the report of the committee, and it was declared adopted.

Mr. FOWLER offered the following resolution:

*Resolved*, That it be referred to the appropriate committee to report upon the expediency of an amendment to the Constitution providing that all local legislation of counties be vested in their respective boards of supervisors—that each town be entitled to one member of such board, and to an additional member for each and every 2,500 of population of such town over and above 2,000.

That such committee further report upon the propriety of prohibiting counties, towns and villages from incurring pecuniary obligations, raising of moneys and making donations for charitable or religious objects, or for any other purpose, other than those which legitimately pertain to their economical government.

Mr. BICKFORD—The gentleman who has just offered the resolution, did not specify what committee it should be referred to. I move its reference to the Committee on Towns and Counties.

The resolution was referred to the Committee on Towns and Counties.

Mr. GRANT offered the following resolution:

*Resolved*, That it be referred to Committee No. 4 to consider the expediency of withholding, by constitutional provisions, the right of suffrage from deserters of the army and navy, including deserters from conscription as well as from actual service.

Which was referred to the Committee on the Right of Suffrage.

Mr. S. TOWNSEND offered the following resolution:

*Resolved*, That the Committee [No. 20] on Industrial Interests, etc., are instructed to examine and report to this body upon the propriety of providing by constitutional provision that the measure of *capacity* or *quantity* be based upon *weight* wherever practicable, and that the expansions and subdivisions of such units of weight shall be in the ratio of decimals.

Which was referred to the Committee on Industrial Interests.

Mr. ROBERTSON offered the following resolution:

*Resolved*, That the Committee on the Judiciary be discharged from the consideration of so much of the matter referred to them by a resolution passed on the 24th instant as relates to the limitation and regulation of claims against the State, and that such matter be referred to Committee No. 3, upon the Powers and Duties of the Legislature.

Which was adopted.

Mr. BELL—I call for the consideration of a resolution offered by me on Friday, calling on the Commissioners of the Land Office for information.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Commissioners of the Land Office be respectfully requested to report to this Convention, as soon as practicable, the following particulars in regard to the "Salt Reservations" of the State.

1. The quantity of land originally set apart by the State for the purpose of manufacturing salt.
2. The quantity of land now owned by the State and devoted to that object.
3. The towns and counties in which said lands are located, and the number of acres in each locality.
4. The present value of such lands, if the same can be readily ascertained, or the nearest possible approximate value thereof.
5. The cost and present value of the salt wells, structures and improvements thereto, made and owned by the State.
6. The probable value of the salines connected therewith.
7. The yearly expense to the State for the care and management of the same; including new structures, repairs, superintendence, etc.
8. The yearly revenues received therefrom.

Mr. BELL—The committee on that subject are of the opinion that further information should be required; I therefore ask that the resolution be amended as I now propose.

The SECRETARY proceeded to read the amendment proposed, as follows:

Add thereto: 9th. The cost of draining lands, by lowering the outlet of Onondaga Lake. The whole quantity of land thus reclaimed, showing the number of acres which inured to the State also to individuals by name.

10. The quantity of lands exchanged for marsh or reclaimed lands, and the value thereof.

11. The amount of money paid, and to whom paid by the State to owners of solar salt works, on lands thus exchanged, for damages to such works, and for removing the same.

12. The names of parties now holding grants and leases from the State for the use of lands for the manufacturers of solar salt. The report to state in detail the lands bought, sold and exchanged on the reservations since 1846; the amount of money received and paid therefor, and for damages or otherwise thereon.

The PRESIDENT—No action having been taken on the resolution it will be amended as requested.

The question was then put on the resolution of Mr. Bell as amended, and it was declared adopted.

Mr. L. W. RUSSELL offered the following resolution for reference:

*Resolved*, That the legislative power be vested in a Senate and an Assembly. Senators shall hold office four years, members of Assembly one year.

Each county shall elect two members of Assembly, and one additional member for each 7,500 of its electors; provided, that the Assembly shall not contain more than 225 members.

The Senate shall be composed of forty Senators, ten of whom shall be elected each year by the electors of the whole State, one from each of the ten Senatorial districts into which the State shall



be divided. The salary of Senators and members of the Assembly shall be \$1,000 per annum, in lieu of all fees and perquisites.

Which was referred to the Committee on the Organization of the Legislature.

Mr. COLAHAN—I move to call up the resolution which I offered on the 25th in relation to accidents on railroads.

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, Numerous accidents have occurred of late years upon the railroads and steamboats of this State, resulting invariably in great loss of life, and

WHEREAS, Such accidents have in most instances occurred through the negligence or ignorance of the corporations or companies controlling said railroads and steamboats, and for the reason of the proven inability of the public to receive redress or security from the Legislature of this State, and of their ineffectiveness of enforcing the civil remedy, now given by statute against such monetarily powerful and politically influential corporations.

*Resolved*, That a committee of five be appointed to consider and devise some action to be had by this body which will hold said corporation or companies to a more strict accountability for their acts, and make them directly amenable for all losses of life and limb sustained by individuals through their neglect or ignorance—action that will make them mindful of their responsibilities and the obligations they are under to the public at large.

Also, that this committee be empowered and directed to ascertain from the proper sources of information, the number of accidents that have occurred, and the number of losses to life and limb for the ten years last past, and report the same to this Convention.

Mr. COLAHAN—Mr. President: The vital importance of the subject of this resolution must be felt by every member of this Convention. Thus far we have had under consideration a variety of propositions for the protection of property, for the full enjoyment of natural rights, for the extension of political privileges, for the greater development of our republican form of government and for the means of better securing the blessings of this government to the people at large. Now sir, I propose in this resolution a subject of still greater importance, one of prior value to that of property and possessions—the better security of life itself. The experience of every observer of daily occurrences for years past, must have made him familiar with the horrible record of railroad and steamboat casualties. The large headings of newspapers, announcing the fact of “another boiler explosion,” “another collision of steam cars turning a curve,” or “running off time,” an upsetting of the train over an embankment, or of dropping through a bridge; inseparably accompanied with the further announcement of — “Serious loss of life” — have perceptibly grown small, not because of the less appreciation of life, but because of the fact of the constant recurrence of such scenes and accidents, and of its familiarizing effect upon the public itself.

These institutions are in the control of the opulent and influential, managed by those who have much to say in the management of the political destinies of this State, those who sing loudest for the public prosperity, and who for these reasons are almost omnipotent in confronting any legislative action that might subject such corporations or companies to a more strict accountability for their action or reduce to any extent the per centum of their dividends. To-day, while boards of directors are calculating their net profits, humanity is being jerked out of existence and into eternity. While dividends are being raised to advance the sale of stocks, or lowered for the purpose of purchasing in, human beings are being blown into open space or sunk in a watery grave. True, a civil remedy is provided, but what is its effect? No individual can successfully carry on litigation with one of these corporations, or if he does, he often finds himself sick, disgusted and penniless long before the determination of such litigation. Even when successful, the damages are limited to the sum of \$5,000, so that these corporations and companies may maim and kill ad infinitum, for the cheap cost of \$5,000 per head. There may be some cases of inevitable accident, but I think the facts will bear me out when I say that four-fifths of these accidents can be traced to the want of skill or carelessness in management, and often to a complete disregard for the security of life itself. Now, sir, I trust that this Convention will not overlook this subject, and answer that it is a matter of legislative business, for the Legislature has repeatedly refused to give a just and secure remedy. It is a subject that commends itself to the earnest consideration of every member present, and one upon which the public will criticise our action probably as closely as upon that of any other subject before this body.

Mr. SILVESTER—I move that that resolution be referred to Committee No. 14, on Corporations other than Municipal, Banking and Insurance.

Mr. COLAHAN—I accept the proposed reference.

The question was then put on the motion of Mr. Silvester, and it was declared adopted.

Mr. POND—I wish to move a reconsideration of the vote yesterday, by which the resolution introduced by me yesterday, in reference to holding the sessions of this Convention at Saratoga, was indefinitely postponed.

The PRESIDENT—The motion will lie on the table under the rule.

Mr. BURRILL offered the following resolution, and asked that it be referred to the Committee on the Bill of Rights.

*Resolved*, That it be referred to the Committee on the Bill of Rights, to inquire into the expediency of so amending the Constitution, as to provide that on trials by courts martial the accused shall be entitled to testify on his own behalf, and shall also be entitled to appear and defend by counsel.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. JARVIS offered the following resolution:

*Resolved*, That it be referred to the Judiciary

Committee to consider the propriety of organizing the Court of Appeals upon the following basis:

The election of ten judges, five of whom shall constitute the court for the hearing of all appeals, and who shall sit alternately during the months of the year; so as to give the five judges holding the court one month, the opportunity during the ensuing month to examine and dispose of the cases previously submitted, and to secure a court of final resort, constantly in session.

Which was referred to the Committee on the Judiciary.

Mr. STRONG—I offer a resolution to provide for the changing of one of our rules.

The PRESIDENT—The Chair will inform the gentleman it cannot be received except on one day's notice under the rule.

Mr. DEVELIN offered the following resolution:

*Resolved*, That it be referred to Committee No. 5, to consider the propriety and expediency of limiting the veto power to questions of constitutionality, exclusively.

Which was referred to the Committee on the Governor, Lieutenant-Governor, etc.

Mr. SILVESTER offered the following resolution:

*Resolved*, That it be referred to Committee No. 3, on the Powers and Duties of the Legislature, to inquire into the expediency of providing in the Constitution that no bill shall be sent from one branch of the Legislature to the other, within ten days prior to the final adjournment.

Which was laid over under the rule.

Mr. GROSS offered the following resolution:

WHEREAS, At the last annual session of the General Court of Massachusetts, before a joint committee, the question of *license* and *prohibition* has undergone a thorough examination, and the advocates on either side have endeavored to place the most ample material on the subject before the Legislature of their State; therefore

*Resolved*, That the Secretary of the Convention be instructed to apply to the State Librarian, or to the Clerk of the General Court of Massachusetts, for several copies of the printed debates on the above named subject for the use of each, the Committee on Legislative Powers and Duties, the Committee on Cities, and the Special Committee on Adulterated Liquors.

Which was laid over under the rule.

Mr. FULLER offered the following resolution:

*Resolved*, That it be referred to the Committee on Canals to inquire into the propriety and expediency of providing for the imposition and collection of tolls on railroads running parallel to the Erie canal in the State, during the season of navigation in each year, in aid of the canal revenues, and as a measure of justice to the people of the State.

Which was referred to the Committee on Canals.

Mr. TUCKER offered the following resolution and moved its reference to the Committee on Contingent Expenses:

*Resolved*, That the same amount of stationery given to the members of the Convention, be allowed to those reporters of the Convention appointed by the President under the rules governing this body.

Which was referred to the Committee on Contingent Expenses.

Mr. E. BROOKS offered the following resolution, and asked that it be referred to the Committee on Canals.

*Resolved*, That the Committee on Canals be directed to examine into and report upon the expediency of providing an amendment to the Constitution for the leasing for a term of years the Champlain canal, provided that leases can be so made as to secure increased revenue for the State, a reduction of tolls, and a speedier as well as cheaper transit of goods.

Which was referred to the Committee on Canals.

Mr. BELL—I call for the consideration of the resolution offered by me on Tuesday, calling for information in relation to the manufacture of salt.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Superintendent of the Onondaga Salt Springs be respectfully requested to furnish, for the use of this Convention, the following information in regard to the salt springs and the manufacture of salt:

1. The whole number of salt wells on the "reservation."

2. The number owned and now in use by the State.

3. The quantity of salt, in bushels of 56 lbs. each, said wells are capable of producing annually.

4. The *least*, *greatest* and *average* quantity of salt of the different kinds produced therefrom.

5. The annual ratio of increase and diminution of production.

6. The principal causes which operate to produce an increase or diminution in the yearly production of salt.

7. The facilities, such as wells, pumps, reservoirs, aqueducts, machinery, labor or otherwise, which the State furnishes in the manufacture of salt, showing the share of the cost per barrel borne by the State in proportion to the whole expense thereof.

8. The minimum, maximum and average price at which salt has been sold at the "works" during the last twenty years.

9. The present price of salt.

10. The whole number of fine salt manufactories or blocks, and the capacity and value thereof, now on the reservation, and by whom owned.

11. The number of coarse or solar salt vats or covers, by whom owned, and the value thereof.

12. The quantity of salt lands leased, to whom, at what rent, and for what term of time.

Mr. BELL—I wish to add an amendment to the resolution.

The SECRETARY proceeded to read the amendment as follows:

Amend resolution by adding thereto as follows:

13. The amount of money received for duties on coarse or solar salt since 1845.

14. The cost to the State, or its pro rata share thereof, for expenses incurred in the manufacture of coarse or solar salt during the same period.

There being no objection, it was amended as requested.

The question was then put on the resolution

of Mr. Bell as amended, and it was declared adopted.

Mr. LAPHAM—At the request of the chairman of the Committee on Pardons, I ask to take from the table the resolution offered by me on the 18th.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Governor of the State be requested to communicate to this Convention as soon as practicable, a list containing the number of the applications made to the Executive for pardon during the years 1864, 1865 and 1866—the number of such applications granted, with the nature of the offenses, in classes.

Mr. LAPHAM—At the suggestion of the gentleman from Albany [Mr. Harris], made the other day, I find that in part 2 of the Manual, which has been laid upon my table since the resolution was offered, part of the information sought in that resolution is already given. I ask, therefore, to substitute the following:

The SECRETARY read the proposed substitute as follows:

*Resolved*, That the Governor of the State be requested to communicate to this body, as soon as practicable, a list containing the number of applications for pardons from 1847 to 1866, inclusive, stating the nature of the offenses in classes.

The question was then put on the original resolution of Mr. Lapham, as amended, and it was declared adopted.

Mr. LAPHAM offered the following resolution:

*Resolved*, That the Committee on Pardons be requested to inquire into the expediency of so amending the Constitution as to provide that all applications for pardons shall be made to the officer or board having charge of State prisons, whose decision, if adverse to the granting of a pardon, shall dispose of the same; but in case a pardon shall be recommended, the decision shall be referred to the Governor for final action, who may grant or refuse the same.

Which was referred to the Committee on the Pardoning Power.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That the Committee on the Powers and Duties of the Legislature [No. 3] be instructed to inquire as to the expediency of restricting the Legislature in the enactment of laws, as follows:

No law shall relate to more than one subject, and that shall be expressed in its title; but if any subject embraced in an act, be not expressed in its title, such act shall be void only as to so much thereof as is not so expressed. This clause shall not be construed to apply to appropriation bills.

No law shall be revised or amended by any reference to its title, but the act revised, or the section amended, shall be re-enacted and published at length.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. MERRITT—I would like to ask for information as to the condition of the motion made by the gentleman from Saratoga [Mr. Pond]. If I understand the rule, the motion does not go

over as a matter of course. If it is desired by the friends of an adjournment to consider it, it is very proper that we should consider it now under Rule 28.

The PRESIDENT—The Chair understood the gentleman from Saratoga [Mr. Pond], to ask that it lie upon the table.

Mr. POND—That it lie upon the table.

Mr. MERRITT—I object.

The PRESIDENT—The Chair holds the objection should have been made at the time.

On motion of Mr. LARREMORE, the Convention adjourned.

FRIDAY, JUNE 28, 1867.

The Convention met at 11 o'clock, A. M.

Prayer was offered by Rev. DEXTER E. CLAPP.

The journal of yesterday was read by the Secretary.

Mr. BICKFORD—The resolution which was offered by the gentleman from Madison [Mr. Fowler], yesterday, was referred on my motion, according to the journal to the Committee on Towns and Counties; it should be, sir, the Committee on Town and County Officers.

Mr. FOWLER—The resolution was properly referred to the Committee on Towns, Counties and Villages. The object of the resolution was in reference to the powers and duties of Boards of Supervisors and the Committee on Towns, Counties, and Villages have jurisdiction over the organization and powers of Boards of Supervisors. I think the resolution was properly referred.

The PRESIDENT—The motion of the gentleman from Jefferson [Mr. Bickford] to refer, prevailed. Does the gentleman accept the reference suggested by the gentleman from Madison [Mr. Fowler]?

Mr. BICKFORD—I am not very particular to which committee it should go, but I thought it was properly referable to Committee No. 7.

The PRESIDENT—The motion to refer having prevailed, cannot be changed except by unanimous consent.

Mr. CONGER—I was going to suggest that on a motion to correct the journal, we could not change a reference of a resolution to any certain committee.

The journal was corrected, and there being no further objection thereto it was declared approved.

Mr. CURTIS—I was not in my place yesterday when the journal was read, but I observed by the paper published in the evening, which is to be the final record of the proceedings of this Convention, that the name which headed the petition I had the honor to present, was incorrectly printed, and as I wish the cause for which that lady has labored should have the benefit of her distinguished name, I ask that the Secretary will change the name to Mrs. Daniel Cady, of Johnstown, in this State.

The PRESIDENT announced the following as the Select Committee on Suppressing Official Corruption by means of constitutional provisions: Messrs. Opdyke, Flagler, Tilden, M. I. Townsend and Loew.

Mr. C. C. DWIGHT presented the petition of

Mrs. Eliza Osborn and twenty-two others, men and women, of Auburn, asking for suffrage for women.

Which was referred to the Committee on the Right of Suffrage.

Mr. COOKE presented the petition of Mrs. Lina Vandenburg and 350 others, on the same subject.

Which took the same reference.

Mr. ARCHER presented the petition of sundry citizens on the same subject.

Which took the same reference.

Mr. WEED presented the petition of Mrs. E. A. Kingsbury and twenty others on the same subject.

Which took the same reference.

Mr. SCHOONMAKER presented the petition of Mrs. M. I. Ingraham and others on the same subject.

Which took the same reference.

Mr. HOUSTON presented the petition of Lucia Sutton and others, on the same subject.

Which took the same reference.

Mr. RATHBUN presented the petition of Mrs. A. H. Sabin and twenty others, on the same subject.

Which took the same reference.

Mr. J. BROOKS presented the petition of Emma Suydam and fifteen others, on the same subject.

Which took the same reference.

The PRESIDENT presented a memorial from McDorough Bucklin, citizen, on the subject of the finances of the State.

Which was referred to the Committee on the Finances of the State.

Mr. GRAVES—I have the pleasure of presenting two memorials, one from Schoharie county, containing the names of 204 men and women, asking that a provision be incorporated in the Constitution prohibiting the sale of intoxicating liquors. The second is the petition of Lucia Humphrey and thirty others, asking for an amendment to provide for equal suffrage.

The first petition was referred to the Select Committee on the subject of adulterated liquors, and the second, to the Committee on the Right of Suffrage.

Mr. STRONG—I give the following notice:

That on to-morrow or some subsequent day, I will propose an amendment to the rules as follows:

That no amendment to the Constitution shall be adopted except upon the affirmative vote of a majority of all the delegates elected to this Convention.

Mr. GREELEY from the Committee on the Right of Suffrage and the Qualifications to hold Office submitted the following report:

Your committee, having given careful attention to the subject referred to them, have prepared as a substitute for Article II. of the present Constitution the following:

#### ARTICLE —.

SEC. 1. Every man of the age of twenty-one years who shall have been an inhabitant of this State for one year next preceding an election, and for the last thirty days a citizen of the United States, and a resident of the election district where he may offer his vote, shall be entitled to vote at such election, in said district, and not elsewhere, for all officers elected by the people;

*Provided*, That idiots, lunatics, persons under guardianship, felons and persons convicted of bribery, unless pardoned or otherwise restored to civil rights, shall not be entitled to vote. No person who shall at any time within thirty days next preceding, have been a public pauper, shall vote at any election. No person who shall receive, expect to receive, pay, or offer to pay, any money or other valuable thing to influence or reward a vote to be given at an election, shall vote at such election; and, upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm before such inspectors that he has not received, does not expect to receive, has not paid nor offered to pay, any money or other valuable thing to influence or reward a vote to be given at such election. Laws may be passed excluding from voting at an election every person, who shall have made, or who shall be interested in, a bet or wager depending upon the result thereof.

§ 2. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, of the United States, or of the high seas, nor while kept in any almshouse or other asylum, at the public expense, nor while confined in any public prison. And the Legislature shall prescribe the manner in which electors absent from their homes in time of war, in the actual military or naval service of this State, or of the United States, may vote, and shall provide for the canvass and return of their votes.

§ 3. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established. And the Legislature shall provide that a register of all citizens entitled to the right of suffrage in each election district shall be made and completed at least six days before any election; and no person shall vote at such election who shall not have been registered according to law; but such laws shall be uniform in their requirements throughout the State.

§ 4. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

§ 5. No person who is not, at the time of taking the oath of office, an elector, shall hold any office under this Constitution. All officers shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of New York; and that I will faithfully discharge the duties of (the office he is to hold) according to the best of my ability."

#### EXPLANATIONS.

It will be seen that the existing article has been retained by us in substance, and that the qualifications of a legal voter proposed by us be:

1. Adult rational manhood.
2. Citizenship of the United States of not less than thirty days' standing.



3. Residence in the State for the year preceding.

4. Residence in the election district for the last thirty days.

5. Freedom from crime.

6. Exemption from dependence on others through pauperism or guardianship.

The material changes we recommend are these,

1st. Strike out all discriminations based on color. Slavery, the vital source and only plausible ground of such invidious discrimination, being dead, not only in this State, but throughout the Union, as it is soon to be, we trust, throughout this hemisphere, we can imagine no tolerable excuse for perpetuating the existing proscription. Whites and blacks are required to render like obedience to our laws, and are punished in like measure for their violation. Whites and blacks were indiscriminately drafted and held to service to fill our State's quotas in the war whereby the Republic was saved from disruption. We trust that we are henceforth to deal with men according to their conduct, without regard to their color. If so, the fact should be embodied in the Constitution.

We ask you to abolish the present requirement of four months' residence in a county as a prerequisite to voting. This exaction bears hardly on such residents of cities as spend their summer mainly in the country, and cannot afford to maintain a double residence. Thousands of intelligent and patriotic young mechanics, employed as carpenters, bricklayers, painters, plumbers, gas-fitters, etc., by masters located in our great cities, are sent out to work in neighboring counties for periods over which they have no control, and in November find their right to vote anywhere questionable, if not invalid. Hundreds of Methodist and other clergymen who are assigned to new charges in summer, find themselves disfranchised when our State election comes around. Under circumstances which impel doubt as to the right of a citizen to vote, the conscientious refrain, while the unscrupulous insist. We hold it wise to abolish a requirement which dobars thousands of capable and worthy citizens, while it is a constant incitement to distortion or suppression of truth, to dissimulation and perjury.

At present, a resident in any county for four months is allowed to vote at the poll of any district wherein he actually resides on the day of election, though he may be a total stranger in that district, and does not pretend to have resided in it two days, only he must vote to fill an office he could not have voted to fill before his change of residence. But how are inspectors to know the contents of his folded ballot? And how are frauds to be prevented in districts where the preponderance of one party is overwhelming? It seems advisable to your committee to require an absolute residence by the voter of thirty days in the district where he tenders his ballot. This will give time for proper scrutiny, and will, when accompanied by an efficient registry, afford a substantial barrier against fraud. And the cases must be few indeed where the requirement of a thirty days' residence before voting will work individual hardship or affect the result of an important election.

Our present Constitution requires that naturalization shall precede voting by at least ten days; a memorial referred to us asks that this interval be extended to sixty days. We have fixed on thirty days as the proper time. We would stop the hunting out and dragging up before courts of indifferent and often reluctant immigrants in order to crowd them into citizenship, in order to affect by their votes the result of a pending election. This is the object of the present requirement of ten days' interval; and it will be far more completely accomplished by extending the prescribed term to thirty days. It is well, moreover, that the terms of citizenship and residence in the election district should be identical, so as to avoid complexity and possible misapprehension. Should we extend the interval between naturalization and voting to sixty days, the change would be inveighed against as impelled by a spirit of hostility to adopted citizens, or by a desire to impede naturalization. We trust the Convention will assent to our proposition.

As to disfranchisement of criminals and law-breakers, what we propose is very nearly identical with what is now prescribed, partly by the Constitution, partly by statute. It has seemed to us advisable to make the qualifications of voters as specific and unambiguous as possible, and to fix them, so far as may be, in the Constitution.

We propose that public paupers shall not be voters. We hold that to allow the inmates of almshouses, subsisting upon the charity of the public, to vote, is to accord an excessive influence and power over the results of our elections to the keepers of those establishments, whose retention in office is often at stake, each of whom can appeal with effect to his boarders not to vote him out of house and home. The end is now awkwardly contemplated in the provision that no pauper shall gain or lose a residence by reason of his stay in an almshouse; but it is evaded by sending the paupers, under watchful keepers, just prior to an important election, to the towns or wards whence they came, there to be registered and vote, when they are welcomed back to their old haunts as patriots who have been absent in their country's and their keeper's service. Specific disfranchisement will add to the wholesome horror of pauperism now cherished by most Americans, and there seems to be no good reason for allowing paupers to govern by their votes the policy of our country and State, and at the same time enabling them to supersede a keeper who may have been so cruel as to require the able-bodied among them to work. At all events, let this matter be dealt with frankly.

Having thus briefly set forth the considerations which seem to us decisive in favor of the few and moderate changes proposed above, we proceed to indicate our controlling reasons for declining to recommend other and, in some respects, more important innovations.

Your committee does not recommend an extension of the elective franchise to women. However defensible in theory, we are satisfied that public sentiment does not demand, and would not sustain, an innovation so revolutionary and sweeping, so openly at war with a distribution of duties and functions between the sexes as venerable and

pervading as government itself, and involving transformations so radical in social and domestic life. Should we prove to be in error on this head, the Convention may overrule us by changing a few words in the first section of our proposed article.

Nor have we seen fit to propose the enfranchisement of boys above the age of eighteen years. The current of ideas and usages in our day, but especially in this country, seems already to set quite too strongly in favor of the relaxation, if not total overthrow of parental authority, especially over half-grown boys. With the sincerest good will for the class in question, we submit that they may spend the hours which they can spare from their labors and their lessons more usefully and profitably in mastering the wisdom of the sages and philosophers who have elucidated the science of government, than in attendance on midnight caucuses or in wrangling around the polls.

The proposition that a tax should be assessed on and collected from voters, is commended, like some others by plausible analogies. The rightful and intimate connection between taxation and Representation was a potent watchword of our Revolutionary fathers; yet we cannot ignore the fact that the Constitution of 1821 having like its predecessors, embodied this principle, an amendment striking out this qualification and thus establishing manhood suffrage, was adopted by the Legislature of 1825, and ratified by an overwhelming popular vote in 1826; yeas, 127,077; nays, 3,215. We do not feel called upon to appeal from their judgment.

Nor have we chosen to adopt any of the schemes of disfranchising illiterate persons which have been referred to us. We freely admit that ignorance is a public evil and peril, as well as a personal misfortune, and we are ready to march abreast with the foremost in limiting its baleful influence. But men's relative capacity is not absolutely measured by their literary acquirements; and the State requires the illiterate, equally with others, to be taxed for her support, and to shed their blood in her defense. We prefer that she shall persist in her noble efforts to instruct and enlighten all her sons by means less invidious and more genial than disfranchisement. Were there no other consideration impelling to this decision, we should rest on and defer to the forcible truths, that ability to read and write is not absolute, but comparative; that inspectors of election are fallible and swayed by like passions with other men—and that they might be tempted, in an exciting and closely contested election, to regard with a partial fondness, almost parental, the literary acquirements of those claimants of the franchise who were notoriously desirous of voting the ticket of those inspectors' own party, while applying a far sterner and more critical rule to those who should proffer the opposite ballots.

Our present Constitution authorizes the Legislature to pass laws designed to ascertain, by proper proofs, the persons entitled to exercise the right of suffrage. We recommend that those laws shall provide for a registration of all the legal voters, to be completed at least six days before each State election, and that none other than registered electors shall vote. Your committee are

confident that the experience of our State and of the civilized world, fully justifies these requirements. Unless the ballot-box is to be regarded and treated as a spittoon, no person should be allowed to vote whose right to do so is not fully ascertained and unquestionable. In a rural neighborhood, where every one who approaches the ballot-box is known to dozens of either party, the frauds of unregistered voting may be mainly confined to those districts where the ascendancy of one party is practically unchecked; but in any densely peopled districts where hundreds offer to vote who are known only to their few cronies, the case is totally different. Not to register the names of the voters, so as to give time for deliberate and general scrutiny, not merely by the few who may chance to be present when a particular vote is tendered, is to stimulate knavery and offer a premium on fraud. It is to proclaim the right of suffrage worthless and proffer to each vagrant or felon half a dozen votes at every election which he may condescend to patronize. To uphold a registration of deeds, yet oppose a registration of voters, is virtually to assert a higher value, a more precious importance in our lands than in our liberties. Doubtless some frauds will be committed where suffrage is so nearly universal, no matter what safeguards may be thrown around the elective franchise; but to maintain that registration, while it does afford protection to the titles whereby we hold our lands, will give none to our right of suffrage is to defy reason and insult our common sense. Your committee would urge that this precious right, so fundamental to all others, be carefully shielded from corruption, and that the main safeguards against its abuse should not be left to unstable and fluctuating statutes, but should be firmly imbedded in the Constitution.

Your committee, having thus fulfilled the duty imposed on them, ask to be discharged from the further consideration of the memorials referred to them, and that these, with this report, be committed to a Committee of the Whole.

ALBANY. *June 28th*, 1867.

HORACE GREELEY,  
*Chairman,*  
LESLIE W. RUSSELL,  
WM. H. MERRILL,  
GEO. WILLIAMS.

Mr. J. BROOKS—Before the question is put upon the printing of this report, I would like to ask one or two questions.

The PRESIDENT—The Chair would inform the gentleman from New York [Mr. Brooks], that the report will be printed under the rules.

Mr. CASSIDY, from the same committee, submitted a minority report, as follows:

The undersigned, while cordially concurring in many of the objects sought to be accomplished by the majority of the committee of which they are members, differ as to several of the conclusions reached by them. The undersigned would prefer to preserve, as far as possible, the language of the existing Constitution, on the subject of the elective franchise, to which usage and the decisions of the courts have given definite interpretations. They would prefer, also,



to retain most of the provisions of the present article in regard to the pre-requisites of residence, etc., and especially that which exacts of a naturalized citizen that he shall have perfected his citizenship ten days before election, instead of requiring, as the article proposed by the committee does, a term of thirty days.

The inevitable effect of the change is to deprive of their votes, in the elections of 1862 and 1863, all that numerous class, who on the faith of existing regulations, may have declared their purpose to become citizens, on or about the tenth day, antecedent to the elections of 1860 and 1861, and who expected to perfect their citizenship in the prescribed two years from that date. If the change shall thus operate to the disfranchisement of many thousand citizens, in two important elections, one of which involves a contest for the Presidency of these United States, that injustice will more than counterbalance any supposed good to be attained by the change. The ten days interposed by the Constitution of 1846 give ample time for the inspection of the registry, and of the rolls of the courts, and afford all the opportunity that either party may need to take measures against the parties to a fraud. Let us not commence the work of reforming our Constitution by practically disfranchising so large a class of our most useful citizens.

The provision which makes the giving or the taking of a bribe a ground of challenge and a disqualification to vote, though it may exclude many from the suffrage, is liable to no such objection. It aims at a great and growing evil and it strikes only at the criminal. Corruption is the leprosy of political society, and the taint is infectious. The venality of the elector is the source of the corruption of the official. The representative who secures his seat by the expenditure of money only reimburses himself for his outlay, when he sells his vote or barter his legislative influence. No penal enactment has yet sufficed to check this evil; but in making it a ground of challenge at the polls, we call the vigilance of parties to our aid; diminish their temptation to corrupt practices; and find in their mutual rivalries the machinery of a self-executing law.

While the undersigned believe that all registry laws are expensive, vexatious and onerous, more often depriving the honest voter of a right than closing the opportunity of fraud against a dishonest one, and while the history of political contests, shows that they have served, as the agency for many of the great conspiracies against the elective franchise; yet they regard the provision of the Committee "that all such laws shall be uniform in their requirements in every part of the State," as a compensation for many of the evils of the system and a most val-

be respected by all when it is equal in its requirements in regard to all.

As respects the extension of suffrage to colored the same as to white citizens of the State, the undersigned submit that if the regeneration of political society is to be sought in the incorporation of this element into the constituency, it must be done by the direct and explicit vote of the electors. We are foreclosed from any other course by the repeated action of the State. In 1846 this question was submitted in a separate article to be voted on, at the same time with the Constitution itself; and was negatived by a vote of 223,884 to 83,306. It was again submitted in 1850, and was again defeated by a vote of 337,984 to 197,503. A similar submission was provided by a concurrent resolution of the Legislature of 1853, which, by the neglect of the State officers to provide for its publication, was defeated; but its fate may fairly be regarded as further evidence of the indifference of the public toward a change.

The undersigned are of opinion that the Convention will depart from its representative character if, after these repeated manifestations of the popular will, it should enact this extension of the suffrage without such a separate submission. It would be unfair to the people to declare: that, whereas, they have again and again refused to accept this change, therefore we will incorporate it into the Constitution and compel them either to reject that instrument, or to accept this measure. If the reform is an organic one, and if other changes in our political system involve this also; and if, under new influences, popular opinion has been modified, let us meet the question and decide it upon its simple merits. To make it dependent upon the fate of financial articles or of changes in the judicial structure, or of innovations of doubtful popularity, would be unjust to the class who solicit this extension of privileges. To force its acceptance against the convictions of the main body of the constituency, by relaxing severe but just restrictions upon delegated power, or by concessions to local or monied interests, would be an obvious wrong of which this body could not be consciously guilty.

The submission of the question by itself is so direct and honest, as to tend to disarm the jealousy with which this question has been regarded by the people. It is without embarrassment or difficulty in practice, and whether the mode of separate submission be extended to other articles or not, the popular will may be consulted in regard to this without trouble or expense.

For the sake, therefore, of disembarassing the Convention from the further consideration of this subject and of collecting

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undersigned reserve, for the present, any expression of opinion.

All of which is respectfully submitted.

WILLIAM CASSIDY,  
JOHN G. SCHUMAKER.

Mr. GREELEY—I was instructed by the Committee to move that the majority report be made a special order for Tuesday. I suppose this being the only report of the kind, it would naturally come up on that day, but I move that it be made the special order for Tuesday, July 9th, at 12 o'clock, M.

Mr. WEED—My only objection to making this subject a special order for July 9th is this, that as I have learned, many of the members of this body wish to adjourn over and not hold sessions to-morrow or Monday, and then there would be no opportunity, on the part of the members of this body, to instruct themselves from the report made by the committee. They would have no opportunity to see it printed or have it placed upon our files. For that reason, it seems to me, it should not be made a special order on Tuesday. As the gentleman from Westchester [Mr. Greeley] has said, this being the only report of the kind, as a general order, it would come up on Tuesday, if printed, and the Convention vote to take it up; but if two-thirds of this body vote to make it a special order, it will require a two-thirds vote, at that time, to postpone it, whether a majority of the Convention wish to take it up or not.

Mr. MERRITT—This Convention has already ordered the printing of the proceedings and debates in the daily newspaper to be laid upon our desks, and the objection of the gentleman from Clinton [Mr. Weed], is entirely obviated, as we shall have both the report of the majority and minority before us.

Mr. GREELEY—The committee had no particular choice about this matter. I supposed the Convention might have some choice as to the day, but if the Convention choose to fix another time we shall agree to it.

Mr. ALVORD—I am opposed to making this a special order, and it seems to me there is great force in the remarks made by the gentleman from Clinton [Mr. Weed]. In our regular order of business to-morrow, if this report shall be laid upon our table, it comes up.

Mr. MERRITT—I believe, sir, I have not yielded the floor.

The PRESIDENT—The gentleman from St. Lawrence [Mr. Merritt] says he has not yielded the floor. The Chair supposed he had yielded and recognized the gentleman from Onondaga [Mr. Alvord].

Mr. MERRITT—This being the first report made from any standing Committee, and one of the most important which is to come before this body, it is very proper that we should all understand on what day it will be taken up for consideration. Resolutions, memorials and other business which is likely to come before the Convention, can be presented at any time. It is understood by this adjournment, which is to take place over the 4th of July, that the Convention will not come together until Monday or Tuesday of the next week. We may meet on Monday evening, but it is not

probable we shall have a quorum. It is very important that we should understand this proposition. At whatever time this shall come up, I have no doubt that every member will desire to be present, if not to take part in the discussion, at least to hear the discussion, and be present to record his vote for or against the report. I hope, therefore, we shall make it a special order.

Mr. ALVORD—I desire to continue my remarks but a very few moments longer. It is an impossibility in the position we now occupy—the probability being there will be hardly a quorum present in this Convention to-morrow, and we shall adjourn over unquestionably until Monday if not still farther—that we shall have this document in a printed form laid upon our tables so we can look over and examine it, between now and the 9th day of July. We should have it upon our tables to be enabled, if necessary to carry it home with us during the recess, so that we can look at and examine this question in reference to both these reports, and decide as to the manner in which this Convention should act. Under the rules, as they now exist, this being the only report of the kind from a standing committee it will come up as a matter of course in the general orders, and it will be then at the disposition of a majority of this Convention. Let it be so disposed of, and when we shall come together again on the 8th or 9th of July, I will go with any member of the Convention to set it down at the earliest practicable moment as a special order, in order that full notice can be given to members of the time when it will come up.

Mr. LIVINGSTON moved to amend the motion by inserting "Wednesday, at 11 o'clock," instead of "Tuesday, at 12."

Mr. GREELEY—I hope not, Mr. President. If the gentleman from Onondaga [Mr. Alvord] will move for an earlier day, I have no objection. I should not like to postpone the consideration of this report upon the idea that the Convention will be thin on Tuesday, as I think we have agreed to meet on Monday evening. If we set this down for Tuesday, we shall have a full session, if we put it off until Wednesday, it will be simply throwing away another day. I cannot accept the amendment of the gentleman from Kings [Mr. Livingston].

The question was then put upon the amendment of Mr. Livingston, and it was declared to be lost.

The question then recurred upon the motion of Mr. Greeley.

Which was lost by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Andrews, Archer, Axtell, Ballard, Barker, Bell, Bickford, E. A. Brown, Carpenter, Cassidy, Clinton, Cooke, Corbett, Curtis, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Farnum, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Garvin, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Hitchcock, Houston, Huntington, Ketcham, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Livingston, Ludington, Merrill, Merritt, Merwin, Miller, Monell, Murphy, C. E. Parker, President, Prindle, Prosser, Rathbun, Reynolds, Root, Roy, L. W. Russell, Schumaker, Seaver, Silvester,



Sheldon, Smith, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—78.

*Noes*—Messrs. C. L. Allen, Alvord, Baker, Beckwith, Bergen, J. Brooks, Champlain, Chesebro, Church, Cochran, Colahan, Conger, Daly, Ferry, Gerry, Hardenburgh, Hitchman, Jarvis, Kernan, Larremore, Law, A. R. Lawrence, Mattice, More, Morris, Nelson, Paige, A. J. Parker, Potter, Robertson, Rumsey, Schell, Schoonmaker, Seymour, Spencer, Strong, Tappen, Tilden, S. Townsend, Tucker, Veeder, Weed, Wickham—43.

Mr. FOLGER, from the Committee on the Judiciary, submitted the following report:

The standing Committee on the Judiciary reports that it has had under consideration the resolution referred to it in relation to certain information from clerks of courts, and have amended the same so as to read as follows:

*Resolved*, That the Secretary of the Convention request, by circular addressed to the clerk of each county in the State; the clerk of the Court of Common Pleas, in the city and county of New York; the clerk of the Superior Court, in the city and county of New York; the clerk of the Superior Court, in the city of Buffalo; the clerk of the City Court of the city of Brooklyn, and of any other city; the clerk of any recorder's court; the clerk of any mayor's court; the clerk of the court of General Sessions in the city and county of New York; the clerk of the court of Oyer and Terminer of the city and county of New York; the clerk of the Marine court of the city and county of New York; that such clerks respectively report to this Convention, as speedily as practicable, how many causes were on the calendar of the court or courts of which he is the clerk, at the terms thereof for the year ending January 1st, 1867, and what was the oldest and what was the youngest date of issue thereof, (including therein the calendar of the general term, the special term, and the circuit or trial term, if such term there be); and at such terms how many causes were argued; how many were submitted, and in courts where there are trials and references, how many were tried and how many were referred, and in the case of the clerk of a criminal court, how many indictments were pending at the last term thereof, and how many were tried or otherwise and in what manner disposed of.

And as amended the committee recommend the adoption of the resolution.

The question was then put on the resolution as reported by the committee, and it was declared adopted.

Mr. SEAVER, from the Committee on Printing, submitted the following report:

ALBANY, JUNE 28, 1867.

Your Committee to whom was referred the following resolution, to wit:

*"Resolved*, That twice the usual number of copies of the Constitution, with notes and references, be printed for the use of the Convention"—

Respectfully recommend that the said resolution be agreed to, and that copies thereof, as fast as printed, be placed upon the files of this Convention.

J. J. SEAVER, *Chairman*.

Mr. GREELEY—I would inquire of the chairman of the committee [Mr. Seaver], how many the resolution calls for?

Mr. SEAVER—Sixteen hundred.

The question was then put on the resolution reported by the committee, and it was declared adopted.

Mr. SEAVER, from the Committee on Printing, submitted the following further report.

ALBANY, JUNE 28, 1867.

The Committee on Printing, to whom was referred the subject of the compensation of the Stenographer to the Convention, respectfully report.

That after due consideration of the subject, your committee are of opinion that the fairest and most equitable plan of compensation is to pay the Stenographer a stipulated sum for a given amount of work, and your committee would, therefore, recommend the adoption of the following resolution:

*Resolved*, That the compensation of the stenographer to this Convention be fixed at five dollars per page of the printed proceedings and debates of this Convention, as the same are now printed and placed upon the files of members; such compensation to include and cover all the expenses of assistant stenographers and clerks that may be employed by the said stenographer in the performance of any and all of his duties as stenographer to this Convention.

J. J. SEAVER, *Chairman*.

Mr. KERNAN—I would like to inquire of the chairman of the committee, about what *per diem*, that will give each man employed.

Mr. SEAVER—I think Mr. President, that will give the Stenographer a *per diem* of about twenty dollars per day, though reckoning our labors to proceed as they have for the last three or four weeks it will afford him but little or no compensation; it will give his principal assistant whom he has employed, one hundred dollars per week; another sixty dollars; another twenty-five dollars; another eighteen dollars; another, twelve dollars per week. I have consulted with persons who are familiar with the employment of stenographers and who may perhaps be called experts in judging what would be a fair compensation for persons engaged in that business, and I am informed that the compensation proposed by the committee is no more than just and fair for the service required. There is one thing further, Mr. President; this Convention has been in the habit of adjourning from Friday until Monday or Tuesday, and we may presume, judging from the temper of the Convention heretofore manifested, that it will hereafter adjourn, very likely from Friday till Monday, for most of the session; that seems to be the feeling, though we may be driven to a greater amount of effort, and greater labor during the remainder of the session, after the recess to be taken to celebrate the 4th of July, and thus avoid such long adjournments. But it must be borne in mind that, while the Convention is thus adjourning, the stenographer has to remain here, and also keep his force of assistants under pay, so as to command their services whenever the Convention returns to its duties.

They have to be paid constantly for their time, else they will go where they will obtain steady employment.

Mr. KERNAN—I have not sufficient knowledge on this subject to form a very valuable judgment, even for myself. But it occurred to me that the price per page suggested, when this Convention may be engaged in debate, would make a very large compensation. I wish that these gentlemen should be compensated fairly and fully in accordance with what they would earn in their vocation anywhere. I should judge, myself, that if they were paid a fair compensation by the day, including days when they were here, whether we were debating or not, it would probably be far more economical, while it would be just to their interests and to the State.

The question was then put on the resolution reported by the committee, and it was declared adopted.

Mr. ALVORD—In the regular order of business, I rise for the purpose of offering a resolution relating to the government and order of the Convention. Gentlemen of the Convention are aware that, under the terms of the law which authorizes our assembling here, the President of the Convention has no authority or power to appoint temporarily, for more than two days, a presiding officer of the Convention to occupy the chair during his absence. They are also aware that our presiding officer resides in a remote portion of the State, and the two days named would be more than exhausted in his going to his residence and returning; so that, under the strict construction of the act, he would be compelled to forego the privilege which many of us have, of going to his home, and spending a portion of the time which might be necessary. Therefore, for the purpose of avoiding this trouble so far as he is concerned, and to permit him to return to his home when it may become necessary, I beg leave to offer the following resolution:

*Resolved*, That the Hon. Charles J. Folger be and he is hereby appointed President *pro tem.* of this Convention, to preside over its deliberations and perform all other duties of the President in his necessary absence, and that the Secretary notify the Comptroller of this appointment.

The question was then put on the resolution of Mr. Alvord, and it was declared adopted.

Mr. FRANCIS offered the following preamble and resolution, and moved its reference to the Committee on the Judiciary.

WHEREAS, All laws conferring powers on Courts of Special Sessions, to try persons charged with petty offenses, whether such persons elect to be so tried or not, have been declared unconstitutional, by the highest courts of the State, and

WHEREAS, The necessity of first procuring an indictment in this class of offenses, and then proceeding to attend in a court of record, operates oppressively on parties injured, and greatly to the prejudice of the public, in vexatious but unavoidable delays, in the expenditure of money, in travel and other expenses while attending courts, in the consumption of the time of parties, witnesses, courts and juries; and

WHEREAS, These delays and this consumption

of time and money in the trial of these trivial cases, greatly tend to prevent parties aggrieved from any attempt to redress their wrongs, and preserve the peace and good order of society, by the punishment of this large class of offenders, thus giving to them immunity in the commission of crime, encouraging them in their evil practices and rendering them and their associates more daring and dangerous; and

WHEREAS, The number of these offenses is so great as to make it impossible for courts of record to try them, even if the complaining parties had the means, practice and perseverance to make the necessary efforts; and

WHEREAS, Prompt and certain punishment is the only sure way to prevent crime and protect the citizen in his rights, therefore,

*Resolved*, That the Judiciary Committee inquire into the propriety of embodying in the Constitution a provision authorizing and empowering Courts of Special Sessions throughout the State, to try all persons charged with misdemeanors, whether such persons elect to be so tried or not.

Which was referred to the Committee on the Judiciary.

Mr. HALE offered the following resolution and moved its reference to the Committee on the Organization of the Legislature:

*Resolved*, That the Committee on the Organization, etc., of the Legislature be requested to inquire whether the advantages which in theory are believed to result from a division of the Legislature into two houses, would not be secured with more certainty by the adoption of a system, the outlines of which should be substantially as follows, viz.:

1. Divide the electors of this State into two classes; one called senatorial electors, and the other assembly electors. The senatorial electors to be those who for the ten next preceding years shall have been entitled to vote in the county where they may offer their vote at any election. The assembly electors to be all others entitled to vote.

2. Senators to be elected by the votes of senatorial electors only; members of assembly by the votes of assembly electors only; both classes of electors, without distinction, to be entitled to vote for all other elective offices.

3. Make it the duty of the Legislature to provide for ascertaining, by proper proofs, to which of the above classes electors belong; and also, at its first session after such enumeration (which shall be made once in ten years), to so adjust the number of years, mentioned in the first subdivision above, that the number of senatorial and assembly electors, shall be equal, as nearly as may be.

Which was referred to the Committee on the Organization of the Legislature.

Mr. T. W. DWIGHT—I ask the unanimous consent of the Convention to recur to the order of memorials.

The PRESIDENT—There being no objection the memorial will be received.

Mr. T. W. DWIGHT—I would like to say a word in reference to the memorial. It is a memorial of the prison association of New York, praying for an amendment to the Constitution relating

to the penal institutions in this State. The subject has been before the committee of the association specially charged with that subject for one or two years, and it has been the subject of correspondence with prison officers and authorities in other States, and is the result of a matured plan of the association. I ask, therefore, that the memorial be read.

The SECRETARY proceeded to read the memorial.

During the reading Mr. SEYMOUR moved that the reading be dispensed with, and that it be referred to the Committee on State Prisons.

Which was lost.

The SECRETARY proceeded with the reading of the memorial to its conclusion.

The memorial was referred to the Committee on State Prisons.

Mr. BELL called for the consideration of the resolution offered by him, requesting the Senate committee appointed to investigate the management of the canals to furnish the Convention with a copy of the testimony taken before them.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Senate committee charged with the duty of inquiring into the management of the canals of this State, the departments thereof, etc., be respectfully requested to furnish this Convention with a copy of the testimony thus far taken on that subject, for the information of the Committee on Canals.

The question was then put on the resolution, and it was declared adopted.

Mr. VEEDER offered the following resolution:

*Resolved*, That the Committee on the Preamble and the Bill of Rights be respectfully requested to consider the propriety of reporting an amendment to the second section of article one of the Constitution, so that the same shall read as follows:

SEC. 2. The trial by jury in all cases shall remain inviolate forever; but a jury trial may be waived by the consent of all the parties in all civil cases, in the manner to be prescribed by law; but no trial shall be had without a jury in any criminal case whatever, except by the voluntary and express consent of the prisoner.

Which was referred to the Committee on the Preamble and the Bill of Rights.

Mr. VAN CAMPEN—I hold in my hand a resolution to provide for the establishment of a Bureau of Statistics, and especially for the registration of births, marriages and deaths.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Committee on Secretary of State, Comptroller, etc., be requested to inquire into the expediency of establishing a Bureau of Statistics, under the charge of the Secretary of State, especially providing for an efficient system of registration of births, marriages and deaths.

Which was referred to the Committee on the Secretary of State, Comptroller, etc.

Mr. MILLER offered the following resolution:

*Resolved*, That the Committee on the Powers and Duties of the Legislature be instructed to inquire into the expediency of reporting a Constitutional provision, taking from the Legislature,

jurisdiction of any subject whenever jurisdiction of the same has been given by law to the Boards of Supervisors or to the courts.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. SILVESTER offered the following resolution:

*Resolved*, That it be referred to the appropriate committee to inquire into the expediency of providing in the Constitution that any member of the Legislature who shall receive or accept of any money or valuable thing for his vote upon any measure, or who shall propose to enter into an agreement with any other member, that either shall vote in a particular manner upon any measure, if the other will vote in a particular manner upon another measure, if such proposition shall be carried into effect, shall be punished by deprivation of the right to vote and hold office, but the person who has offered or paid or delivered such money or valuable thing, or who has assented to such proposition for such exchange of votes, if such proposition has been carried into effect, shall not be liable to any penalty or punishment and shall be a competent and compellable witness, unless upon the trial of the member who has accepted such money or valuable thing, or who has made such proposition.

Mr. SILVESTER—I ask that the resolution be referred to the Select Committee of Five on the subject of Official Corruption.

Which reference was ordered, there being no objection thereto.

Mr. BELL—When I called up the resolution requesting the Senate committee to investigate the management of the canals, to furnish a copy of the testimony taken before them, I neglected to include in my motion to adopt the resolution, a further proposition that the testimony, when furnished, be referred to the Committee on Canals. I now ask unanimous consent to make a motion that that reference be made.

There being no objection the reference was ordered.

Mr. GOULD—Since we passed the order of communications I have received a communication from Dr. Francis Lieber, of New York, on the subject of requiring unanimity among jurors. It contains so many references to history that are not generally accessible, and which it is desirable should be preserved, I desire that the whole document be spread upon our journal and be printed, and that the communication be referred to the Committee on the Judiciary.

Mr. RUMSEY moved that the communication be referred to the Committee on Printing.

Which was carried.

Mr. BICKFORD offered the following resolution:

*Resolved*, That it be referred to the Committee on the Pardoning Power, to inquire as to the expediency and propriety of conferring a portion of the pardoning power, in cases of offenses below the grade of felony, on some county officer or officers.

Also, that the said committee inquire what constitutional provision can, with propriety, be made, to prevent the practical exercise of the par-



doning power by indirection, by officers and persons not vested therewith—as for instance, by the Legislature, under pretense of a general enactment, as was done in the case of Mary Hartung, who escaped the punishment of death and all other punishment, for the murder of her husband, through an act of the Legislature, after the most persistent, yet unsuccessful applications to the Governor for pardon, or for the commutation of her sentence—by members of the Legislature, who knowing of corrupt practices by other members, or by lobby agents, neglect to expose the guilty, and bring them to punishment, through a mistaken notion of being merciful, or from notions still worse—by Grand Juries who refuse to indict criminals clearly proved to be such, for the improper plea that they are saving the county from expense of a trial, or because they have an unfavorable opinion of the law which has been violated—by the courts charged with the trial of criminals, and by judges of the courts in discharging offenders on their own recognizances, admitting to bail on easy terms, putting over trials until the testimony of witnesses necessary to convict cannot be obtained, suspending sentence indefinitely, and otherwise—by district attorneys in entering a *nolle prosequi*, and otherwise neglecting to do their utmost to punish criminals according to law—by magistrates having jurisdiction to issue warrants for the arrest, examination and commitment of offenders, in declining or seeming unwilling to entertain complaints, letting offenders to bail for trifling sums, and otherwise—by constables, police officers, sheriffs and others in permitting criminals to escape; and by individuals in compromising and settling with offenders, sometimes with, and sometimes without, the connivance of magistrates and other officers charged with the duty of bringing criminals to justice, a prominent instance of which has been recently brought to public attention in the case of the Lord bond robbery and the recovery of the stolen bonds at a cost of \$120,000 paid to thieves and detectives, accompanied, as is believed, with an understanding that there was to be no prosecution for the robbery.

Which was referred to the Committee on the Pardoning Power.

Mr. SCHOONMAKER — Not to be entirely out of the fashion, I offer the following resolution :

The SECRETARY proceeded to read the resolution, as follows :

*Resolved*, That it be referred to the Standing Committee on the Powers and Duties of the Legislature, to inquire into the expediency of introducing into the Constitution a provision substantially as follows :

“The Legislature shall not grant or authorize extra compensation to any contractor after the services shall have been rendered, or the contracts entered into.”

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. WEED offered the following resolution :

*Resolved*, That it be referred to the Committee on the Judiciary to consider and report upon the propriety of providing, by constitutional provisions, that no fee or charge shall be imposed upon suitors in the surrogates' courts of this State.

Which was referred to the Committee on the Judiciary.

Mr. S. TOWNSEND offered the following resolution :

*Resolved*, That as a provision proper for insertion in the Constitution, be referred to the Committee on the Preamble and Bill of Rights the following proposition :

Remedies existing at the period when a contract is made, shall not be disturbed or impaired by subsequent legislation.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. BAKER—I call up for consideration a resolution offered by me the 19th inst., asking for information.

The SECRETARY proceeded to read the resolution as follows :

*Resolved*, That the Comptroller of this State be requested, at as early a day as practicable, to report to this Convention the whole amount of moneys appropriated by the Legislature of this State, and paid by the Comptroller, to the several local private institutions, called charitable institutions, not chartered by the Legislature, from 1857 to 1867, both inclusive, giving the name and location of each institution so receiving such appropriation, and the amount received in each year during the time aforesaid.

Mr. BAKER—At the suggestion of several members, I desire, if in order, to offer a substitute for the original resolution :

The SECRETARY proceeded to read the substitute as follows :

*Resolved*, That the Comptroller of this State be requested, at as early a day as practicable, to report to this Convention, the whole amount of moneys appropriated by the Legislature, and paid by the Comptroller to the several public and private, religious, educational and charitable institutions of this State—specifying as far as practicable, those chartered by special act of the Legislature—those incorporated under the general act enabling such incorporation, and those not chartered. Stating the place where each of such institutions is located, with the amount of moneys so paid to each of said institutions, in each year from 1847 to 1867, inclusive.

The question was then put on the substitute to the original resolution, and it was declared carried.

The question then recurred on the original resolution as amended by the substitute, and it was declared adopted.

Mr. STRATTON — Day before yesterday, I presented a communication from Mr. H. B. Wilson, which was, upon my motion, laid on the table. I now move to take the communication from the table, and that it be referred to the Select Committee on the subject of suppressing official corruption.

The PRESIDENT — The communication not having been laid on the table by a vote, it is not necessary that a vote be taken to call it up.

There being no objection the reference suggested was ordered.

Mr. BICKFORD offered the following preamble and resolution :

WHEREAS, The functions of juries, especially



of grand juries and juries in courts of record, are most important, and it is essential to the due administration of justice that juries be composed of intelligent and honest men; and,

WHEREAS, Many complaints are made of the manner in which the making up of jury lists has been of late practiced:

*Resolved*, That it be referred to the Committee on the Judiciary to inquire whether any, and if any, what provision should be placed in the Constitution in regard to the making up of the list of persons from which juries are to be drawn; and that they consider the following plan, among others:

Let the board of supervisors of the county annually prescribe the number of jurymen to be placed on the lists, and apportion the number among the towns and wards of cities in proportion to population. Then let each elector in the town or ward, at the annual election in November, vote for such a number of the jurymen apportioned to the town or ward, as shall be the smallest number which is more than one-half of the number to be elected; and let the person having the greatest number of votes, to the extent of the number apportioned to the town or ward, be declared elected, and the person so elected to form the list of jurymen for the year.

Which was referred to the Committee on the Judiciary.

Mr. J. BROOKS—I rise, Mr. President, to ask for a leave of absence, the duration of which I am not able to state, because I am called to another sphere of duty. I do not know whether I shall be there occupied for two weeks or the remaining portion of two years. I ask also to be excused from serving upon two committees, to which you have done me the honor to appoint me, in order that the places thus vacated may be filled by the appointment of others in my stead. I will also state, while I am up, that I should resign my seat here but for two reasons; one is the uncertainty as to the time I shall be absent, and the other is that a resignation would subject the city of New York to a very large expense, to hold another election, which might be unnecessary, as I may be able to return to my duties here in a short time.

The question was put on the motion to grant leave of absence to Mr. J. Brooks and it was declared carried.

The question was then put on the motion to discharge Mr. J. Brooks from serving on the committee of which he was a member and it was declared carried.

On motion of Mr. SCHOONMAKER, the Convention adjourned.

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SATURDAY, JUNE 29, 1867.

The Convention met at 11 o'clock A. M.

The President *pro tem.*, Mr. Folger in the Chair.

Prayer was offered by Rev. DEXTER E. CLAPP.

The Journal of yesterday was read by the SECRETARY; no objection being made thereto it was declared approved.

Mr. WEED moved for a leave of absence for Mr. George M. Beckwith until Wednesday next.

There being no objection the leave of absence was granted.

Mr. RUMSEY—I move that when this Convention adjourns, it adjourn to meet on Wednesday next.

Mr. COOKE—I move to amend the resolution by striking out "Wednesday" and inserting Monday evening at half-past seven o'clock.

Mr. C. L. ALLEN—I move to amend it so it will read, that when this Convention adjourns it adjourn to meet on Tuesday the 9th of July.

Mr. RUMSEY—Is it in order to make a motion of that kind, there being a resolution passed that when this Convention adjourns on Wednesday next, it adjourn to meet on the 8th of July. My motion was made with reference to the order which was previously made by the Convention.

Mr. C. L. ALLEN—I wish to avoid all unnecessary implications and reflections upon this Convention. We are charged with evading the law by adjourning from day to day, for the purpose of drawing our per diem allowance. I presume that no such idea exists in the mind of any member of this Convention. It is perfectly clear that we shall not have a quorum to do business until after the recess, and we may as well adjourn first as last, and I think we can override this motion, or at least virtually reconsider it, by adopting the amendment which I have submitted to the consideration of the Convention, as we will only meet from day to day without a quorum.

Mr. RUMSEY—I accept the amendment of the gentleman from Washington [Mr. C. L. Allen] if it is in order.

The PRESIDENT *pro tem.*—The Chair is of opinion that it is in order, as the greater includes the less.

Mr. AXTELL—I rise to a point of order. I believe there is not a quorum of the members present this morning.

The PRESIDENT *pro tem.*—The Chair is not informed of that fact officially.

Mr. WEED—I trust the gentleman from Clinton [Mr. Axtell], will not insist on ascertaining that question, because certainly there should be no desire on his part to prevent the few members who remain here, from leaving after all the rest are gone.

Mr. RATHBUN—I hope the gentleman from Washington [Mr. C. L. Allen], will modify his motion so as to make it Monday, July 8th, at half-past seven P. M. I think it would be much more likely to be satisfactory to those who are gone as well as those who are here. I am in favor of his proposition with that modification.

Mr. C. L. ALLEN—I have no particular objection to say Monday evening, at 7½ o'clock P. M., except that every gentleman will take it for granted that means Tuesday morning, and we may as well say Tuesday at once, then all will be able to attend. That is the reason I suggested Tuesday, at 7½ o'clock, instead of Monday.

Mr. BICKFORD—I think there is no quorum present this morning. When the resolution was taken the other day to adjourn over from Wednesday until the next Monday, there was a very full attendance. Although the persons who may be present this morning, may see fit to adopt a longer adjournment, I submit it is not exactly

fair to those gentlemen who are not here this morning, that we do now in their absence take a longer adjournment, further than was contemplated by the Convention when there was a full attendance. I, therefore, think it would be best to insist upon the point of order, and as there is no quorum present, that we should adjourn from day to day. I cannot vote for an adjournment until Wednesday next. I think it better to ascertain the fact that there is no quorum present.

Mr. C. L. ALLEN—I understood the President to decide that the point of order was not well taken.

The PRESIDENT *pro tem.*—The Chair is not informed officially that there is no quorum present.

Mr. HALE—I do not agree with my friend from Jefferson [Mr. Bickford], in saying it is unfair to those who are absent, if there is an adjournment for a week. I think, on the other hand, if there is any unfairness, it is on the part of those members of this Convention who, having voted that the Convention should remain in session until Wednesday, and then adjourn until Monday, have thought it proper to run away and leave us. The number of those present, as is obvious, is quite small. It is pretty obvious, too, to all of us that nothing will be done in this Convention next week. I submit that it is altogether more proper for us now to adjourn for a week, knowing, as we do, that nothing will be done within a week, than it is to adjourn until next Wednesday, and from that time until Monday. I hope, therefore, the resolution as amended by the gentleman from Washington [Mr. C. L. Allen] will prevail, and that we shall adjourn now either until Monday evening or Tuesday. I do not know that I have any choice in regard to that, though I think most of us will not be able to get here until Tuesday.

Mr. WEED—I fully concur in what the gentleman from Essex [Mr. Hale] has said, with reference to our duty toward those who voted not to adjourn over the 4th of July, until next Wednesday. It seems to me that it is our duty—believing as I do that there will not be a quorum present in this Convention before the 8th or 9th of July—to adjourn over until the 8th of July, and instead of it being a duty and an obligation toward those who voted not to adjourn, that we are in common justice bound to adjourn over, so as to deprive them of their pay from now until next Wednesday, they having voted not to adjourn and then having gone home and left us without a quorum. I suggest to the gentleman from Jefferson [Mr. Bickford], that if he will look over the list of those who voted not to adjourn, he will find that more than one-half of them have left, and the great bulk of them left with the intention of not returning until the 9th.

Mr. BICKFORD—It is perfectly obvious to the gentleman from Clinton, [Mr. Weed], as well as to other gentlemen, that there is no quorum present here to-day, and inasmuch as we have been charged with doing things by indirection, let us not do any business that we do not want to have seen plainly before the world. It seems to me, with all respect to those who favor this proposition to adjourn over, that we cannot adopt any motion to do

away with the action of the Convention when it was full. I submit that we should not, if it is obvious there is no quorum present, take any action which we could not take if the absence of a quorum was officially shown.

Mr. WEED—We can take the action if there is no call of the house.

Mr. BICKFORD—As long as there is no quorum present, all we can do is to adjourn from day to day; and I shall deem it my duty to move for a call of the house if this motion is insisted on.

Mr. COOKE—I am one of those members, whose name appears on the list among those who voted not to adjourn over until next week, and I rise simply to say, that I was not influenced by the motives which have been imputed, by indirection, to those who voted with me, namely, that we might save our per diem pay. I voted in that way simply to keep this Convention here in working order. I felt as though we had no time to waste, and that we ought to make use of all the time that was possible, and I have made this amendment for the purpose of continuing business. I can understand there are many things that may be done by the members of the Convention, much of the committee business may be continued, many of the members of important committees are here, and can continue their work. I have no doubt there will be a quorum here on Monday or Tuesday at any rate, and the object of my amendment is to save two days' labor of this Convention.

Mr. ALVORD—I do not desire to enter into this debate, except for a single purpose—to explain, if necessary, the position which I occupy, in reference to my action on the original proposition, and to my amendment not to adjourn till Wednesday. I have heard it intimated, upon the part of members of this Convention, that the motive of some, was to avoid the loss of their per diem. I voted for the proposition, as amended in the manner I suggested, with the perfect knowledge, that we must of necessity lose the per diem under the amendment. I know that the Comptroller of the State, rules, and rules correctly, that although the 4th of July is a legal holiday under the laws, yet so is Sunday a legal holiday, and as we are paid for Sundays, although we do not sit in convention on Sunday, therefore he counts the 4th of July as well as Sunday, in the calculation of the three days. So that the adjournment from Wednesday over until the succeeding Monday, carries with it, under the law as it exists, the loss of the per diem, for the four days for which we would have adjourned according to my amendment of the original proposition. I offered the amendment for the purpose of endeavoring to get this Convention to keep together during so much of the time that we have between now and the election next Fall, as possible, in order to complete our labors. We have of necessity a very large amount of work to do and perform, which we cannot avoid, even if at the end of our work we shall have come to the conclusion to make very little alteration in the Constitution as it now stands. It requires time—it requires a vast amount of time and labor; and if we do not go to work and apply more of that time and labor between now and then, than we have for the four

weeks we have been here together, we cannot, by any possibility, get through and perform any portion of our business. But I see the position in which we are situated to-day. I see many of the gentlemen of the Convention who voted for my amendment are absent. I leave it to them to make their own excuse for their absence. They have compelled us under the circumstances to submit to what they, perhaps, did not think of, when they voted for my amendment.

Mr. C. L. ALLEN—I rise for the purpose of making an explanation in reference to some remarks which fell from my friend from Ulster [Mr. Cooke]. I hope he did not imagine that I intended to throw out any intimation upon the members of this Convention—

Mr. COOKE—Certainly not.

Mr. C. L. ALLEN—I hope he did not think, when I spoke of intimations which had been thrown out, that when we voted not to adjourn, it was done by some with a view of evading the law and of saving our per diem allowance, that I intended to include or to allude to any member of this Convention.

Mr. COOKE—If the gentleman from Washington [Mr. C. L. Allen] will allow me. I did not intend to allude to anything which was said by him. I alluded more particularly to what was thrown out the other day in the discussion on the motion of the gentleman from Onondaga [Mr. Alvord].

Mr. C. L. ALLEN—In reference to the remarks of my friend from Onondaga [Mr. Alvord], I understood him to say, he has no doubt but we shall lose our per diem allowance (notwithstanding the Comptroller might give a different construction to the law), after we adjourn next Wednesday. But suppose we adjourn, as is proposed, from now till Wednesday, which is three days, then the per diem allowance will be claimed, and will be allowed, and then when we come to adjourn on Wednesday, the per diem would probably be disallowed from that day. I propose that we adjourn now, until the 8th or 9th of July, I am not very particular which (only for the reasons I have suggested, that some members will not be able to get here on the 8th), in order that no question can ever arise hereafter, or any ground for any imputation of this kind against members, one and all, as well those who are assembled here to day, as those who are absent. As we must be perfectly satisfied, all of us, that no business will be done here until after the recess, it would be idle for us to come here from day to day, simply for the purpose of adjourning again. One word with regard to the remark made by the gentleman from Ulster [Mr. Cooke], that the committees might continue their business. We are all of us perfectly aware that a majority of the members of this body are already absent, and many of them I know, from their intentions as expressed to me last evening, do not intend to return until after the close of this recess, so that though there may be a minority of several committees here, yet what business can be transacted unless there is a quorum of each committee present? I undertake to affirm, as it is my sincere belief, that not a

remain here, between now and Wednesday, to transact any business, and in view of that, can it be the duty of the few members who are here, to remain from day to day without even the privilege of going before the committees to which they belong? I know, and perhaps other gentlemen may know, that several of the committees had a meeting yesterday or the day before, and they adjourned the further sessions of their committees to a day beyond the approaching recess so that of course these committees cannot assemble, and will not assemble, and gentlemen who are members of these committees have gone home, with a view of not returning here until after the recess. It was in view of these facts, I offered this amendment, and I hope it will be adopted. I will adopt the suggestion of my friend from Cayuga [Mr. Rathbun], and substitute Monday instead of Tuesday, if he thinks it will secure a more favorable consideration.

Mr. BELL—I do not rise to explain my vote or to excuse any gentleman who has voted with me or differently from me, on the vote I have given with regard to an adjournment. But it will occur to every member of the Convention who will look at the number of the members present, that there must be, at least, less than one-third here, and the probability is, those absent will not return here until the 8th or 9th of July, and although I am very desirous that the business which has called us together here, should be proceeded with, at least that the committees might meet and prepare business to present to the Convention on its re-assembling here, yet, practically, it will be of no use for us to adjourn from day to day until Wednesday, and from then until the time fixed, but we may as well, I think, adjourn from now until that day. I am therefore in favor of the motion now pending of the gentleman from Washington [Mr. C. L. Allen], to adjourn until 7½ o'clock P. M., on the 8th of July.

Mr. RUMSEY—I accepted the amendment of the gentleman from Washington [Mr. C. L. Allen], that the adjournment be until Monday the 8th, at 7½ o'clock P. M.

The PRESIDENT *pro tem.*—The Chair is of the opinion that there is another amendment intervening, so that it is not in the power of the gentleman to accept it.

Mr. HADLEY—If it be in order, I move that this Convention now adjourn until the 8th of July.

The PRESIDENT *pro tem.*—That is the motion already pending.

Mr. HADLEY—My motion is that the Convention adjourn now. The motion of my friend is, when the Convention adjourns, it adjourn to meet on the 8th.

The PRESIDENT *pro tem.*—The Chair is of opinion it is not in order, there being a motion to adjourn to a specified day, already pending.

Mr. SEYMOUR—After the vote taken the other day, I think it is pretty clear that the members of the Convention who are now present, are here in the line of their duty. We have come here expecting to transact the proper business of the Convention, and I am in favor of the motion of the gentleman from Washington [Mr. C. L. Allen] as modified,



by adjourning until Monday evening next, which will be according to our custom, and which will also be in the line of our duty. I do not know that it is proper for us to conclude, without proof, that there will not be a quorum of the members of this Convention here at that time, and that we may not proceed on Tuesday or Wednesday with the transaction of business as usual. Hoping that it may be so, and I think we are bound to construe in the absence of proof, that it is so, and knowing that it is in the line of the duty of this Convention so to do, I hope the motion may prevail.

Mr. C. L. ALLEN — My motion is to adjourn until Monday evening, the 8th of July.

Mr. SEYMOUR — I supposed it was next Monday. As it seems I was mistaken, I move as an amendment that we adjourn until Monday evening next, at 7½ P. M., according to the usage of this Convention.

Mr. WAKEMAN — I think that the gentleman from Rensselaer [Mr. Seymour], has misunderstood the amendment of the gentleman from Washington [Mr. C. L. Allen]. His amendment was to adjourn until Monday, the 8th of July, instead of next Monday. I am opposed to the amendment of the gentleman from Washington [Mr. C. L. Allen]. I steadily voted against all these long adjournments. It is true, sir, that gentlemen have left, and they probably will not be back, many of them, till after the recess; but I think, there will be a quorum here, at least, on Tuesday or Wednesday, and if there should not be, it will not be the fault of those gentlemen who have remained here to perform their duty.

Mr. WEED — The gentleman [Mr. Wakeman], certainly understands that we are to have no session on Wednesday, for the resolution as passed by the Convention, provides that at 11½ o'clock, A. M., on Wednesday, we shall adjourn till the 9th of July. We may meet here on Wednesday, but we can do no more than read the Journal, before 11½ o'clock, and then we shall be obliged to adjourn at once, so there can be no business done on that day. And if we adjourn till Monday, at 7½ o'clock, as there never has been a quorum yet on Monday evening, we shall only come together on Tuesday to do the business of the Convention, and very likely not have a quorum on that day.

Mr. WAKEMAN — I understand sir, but yet I apprehend if the people of this State see that we have adjourned for an entire week, and more than that, for the purpose of celebrating one day, the anniversary of our National Independence, in addition to our former adjournments, they will think we are neglecting our duty. Heretofore, every Friday evening every man who lived within a short distance, where they could return home, has taken the liberty of going home, while members of the Convention living in a distant part of the State have been compelled to stay here, some of them even until now; therefore, I am opposed to long adjournments now, as I have been heretofore, and as I trust I shall be in the future.

Mr. CLINTON — I rise to a point of order, or rather, to make an inquiry, as I am not skilled in parliamentary law. As I understand it, this Convention a day or two ago, resolved that it would

hold a session on Wednesday next, and they would then adjourn over until Monday following. If that be so, I wish to inquire if any motion which provides for an adjournment now for a period beyond Wednesday, is in order until we have reconsidered the vote by which we determined to adjourn on Wednesday next. With reference to the matter of adjournment, I feel indifferent, I have no desire to signalize my zeal for labor. All I wish to say is, I supposed it was the understanding of the Convention, when they adopted the resolution to which I refer, that we should be here to-day and on Monday and Tuesday at our post at work, and I think we should be here down to the hour fixed for the adjournment, and unless there be a change, I shall live up, practically, to what I supposed was the understanding.

The PRESIDENT *pro tem.* — Does the gentleman from Erie [Mr. Clinton] insist upon his point of order.

Mr. CLINTON — I would like to get the opinion of the Chair.

The PRESIDENT *pro tem.* — The information of the Chair is, that on Thursday the Convention resolved that it would, on Wednesday next, adjourn until Monday of the then subsequent week. The motion now is to adjourn from this day until Tuesday, the 9th day of July next. The Chair is of opinion that this motion is in order, for it does not seek to reverse the former action of the Convention, but really includes that action, in an adjournment of a greater extent. This precise motion has not yet, so far as the Chair is informed, been negatived by the Convention. It is true that the Convention did refuse to adjourn from Friday of this week until Monday the 8th July, but it did not refuse to adjourn from this day to any future day. And as the termini of the adjournment proposed by this motion includes those of the motion once adopted by the Convention, and stated by the gentleman from Erie [Mr. Clinton], the Chair will hold that the point of order suggested by that gentleman is not well taken.

Mr. HADLEY — I wish to ask if amendments are in order now?

The PRESIDENT *pro tem.* — An amendment would not be in order now as there are two amendments pending.

Mr. HADLEY — I understood that one amendment was accepted by the gentleman from Steuben [Mr. Rumsey].

The PRESIDENT *pro tem.* — The Chair held that the gentleman was not at liberty to accept it then.

Mr. HADLEY — Then I move that this Convention adjourn until Monday evening at six o'clock.

The PRESIDENT *pro tem.* — The motion of the gentleman can hardly be entertained now, as there is already a motion to adjourn to a fixed day. A motion to adjourn is in order.

Mr. HADLEY — Then I move that this Convention do now adjourn.

The question was put on the motion of Mr. Hadley, and it was declared lost.

Mr. MILLER — I am in favor of the motion of the gentleman from Ulster [Mr. Cooke], that when this Convention adjourns it adjourns to meet



on Monday, at half-past seven o'clock. I have noticed in the open meetings of this Convention that a large part of the business that has been transacted has been the offering of resolutions, containing suggestions to the various Committees of the Convention. I noticed that at our last meeting there was no dearth of resolutions and I suppose they have not all been offered yet. I would suggest that this business can be as well done without a quorum of the members being present; and as most of the committees have adjourned to have their final meetings when the Convention shall meet after the recess, these resolutions ought to be introduced in season to be referred to the committees before the 4th of July. I would suggest, therefore, that Monday, Tuesday and Wednesday can be very well employed for this purpose. As to the gentlemen who are absent, that, of course, is their business; they have undoubtedly good and reasonable excuses for their absence. Our business is to be here and to attend to our duty to-day, and the days of next week as well.

Mr. AXTELL—I have steadily voted against long adjournments. I would have preferred that we had simply adjourned over the 4th of July, being under the impression that the 4th of July would survive, if the members of this honorable body were not present in their respective localities, to take part in the exercises on that day. I know it did survive when several hundred thousand men who are now scattered over the country were absent; there were no adjournments for the 4th of July when we were engaged in the business of putting down rebellion. As we are now serving the country, my impression has been all the way through, that we should proceed with our business, and I voted with the honorable gentleman from Onondaga [Mr. Alvord], on the understanding that we had little time enough to do the business which has been assigned to us, so the people may act intelligently upon it. It is by no means certain that we may not have a quorum present on Monday and Tuesday, and the usual business may be done. For these reasons I am in favor of the amendment proposed by the gentleman from Ulster [Mr. Cooke].

Mr. KRUM—I am in favor of the amendment of the gentleman from Ulster [Mr. Cooke], first, for the reason suggested by the gentleman from Delaware [Mr. Miller], and also for the further reason that a resolution was adopted one day this week providing that when this Convention adjourns on Wednesday it adjourns at half-past eleven o'clock until the following Monday. When that resolution was adopted, it was adopted in full Convention. A large number of delegates elected to this Convention were then present, and the resolution was adopted understandingly. The major part, or a good many of the delegates are now away under the assumption, I have a right to assert, I think, that that resolution would remain the resolution of this body, and went away with the idea that they would return to this Convention on Monday next, at 7½ o'clock. I do not know who are authorized to say that there will not be a quorum of members present at 7½ o'clock on Monday. The gentlemen who are not here,

left with the understanding that this Convention would stand adjourned until that time, and it is fair for us to infer that gentlemen intend to stand by the resolution adopted and be here at that time. For these reasons, and believing it is unfair to those that are away, and for the reason suggested by my friend from Delaware [Mr. Miller], I believe that this Convention when it adjourns this day, should adjourn in accordance with the terms of the resolution, until Monday evening at 7½ o'clock.

Mr. WEED—In answer to the position taken by the gentleman from Delaware [Mr. Miller] and the gentleman from Schoharie [Mr. Krum] that Monday, Tuesday and Wednesday should be devoted to resolutions, I would suggest that from the fact that no resolutions have been introduced thus far, this morning, the resolution-ary members have gone, and they will not be back until after the 4th of July.

Mr. MILLER—I think that there has been no opportunity to introduce resolutions, thus far, the question of adjournment having taken up the whole time.

Mr. RATHBUN—I voted with the majority on the motion to adjourn on Wednesday next until the Monday following. I voted understandingly on my own part, and supposed it was so understood by the Convention, that no members would get any pay during the continuance of that adjournment. I voted for the adjournment with the expectation that this body would remain here and attend to the business of the Convention until Wednesday next. It is of no use for us to disguise the fact that we are here in a condition not very promising for the performance of hard labor. I have the greatest respect for the gentlemen who have gone away—and I do not desire to call them back until the time fixed by them to return, which was, when they left, the 8th or 9th of next month. I know a large number of them went away yesterday, beginning in the morning, and ending in the evening, and not one of all of them intimated any idea of returning until the 8th of July, and a good many of them were doubtful whether they would be able to get back then. It would be very pleasant if I were away, to have gentlemen stay here, hanging around the Capitol, meeting in the morning, and adjourning until the next day, so as to give me my six dollars a day while I am gone; whether I should feel that it was honestly obtained or not, is another question. But it is certain that it would be six dollars a day in my pocket, with no benefit to the State or to the people, and certainly not very creditable to the body who would continue their sessions without adjournment, and without hoping to do business. We have been accused of fixing the time of our adjournments with the view to save our per diem compensation; but there are a good many gentlemen here, who voted for the adjournment, not believing that it would save them that compensation. I think if we vote in favor of the amendment offered by the gentleman from Washington, [Mr. C. L. Allen], we will relieve ourselves from any imputations that our former vote, to fix the adjournment from Wednesday next until Mon-

day, was influenced by the motives that are attributed; that we did not intend to adjourn long enough to lose the six dollars a day, and at the same time get rid of work. I am in favor of adjourning until Monday, the 8th at 7½ o'clock, and I will state why. It may not be popular to say it, but I expect to be all day on Monday the 8th, riding through the dust and sun paying my whole expenses to Albany, to attend the Convention. I expect to arrive here and appear on the floor of the Convention at 7½ o'clock, and answer to my name. And I expect pay for that day, being engaged in the public business, traveling two hundred miles to get to my place of business, and answer to the roll call. I do not believe that I am called upon to do that at my own expense. I am compelled to go home and then I am compelled to return to attend to my duties. When I travel all day, and pay out as much for travel as I receive, and attend a session, I do not believe it is dishonest to ask that for that expense, I shall be remunerated. If gentlemen do not like it, they will vote down the proposition to meet on Monday, the 8th, at 7½ o'clock, and I will coincide with them in the vote; but I believe it is just that we should adjourn until that time. I believe there will be a quorum on that day, and then the resolutions will be ready—the ponds will be full, and they can be emptied again—and on Tuesday morning we can go to work.

The PRESIDENT *pro tem.* then announced the question to be on the amendment of Mr. C. L. Allen.

Mr. SCHOONMAKER—I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Schoonmaker, and it was declared lost. A count being called for, it was taken, and the result declared: ayes, 14; noes, 25.

The PRESIDENT *pro tem.*—The motion to adjourn is lost; there is no quorum present.

Mr. HADLEY—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Hadley, and it was declared lost.

Mr. BICKFORD—How do we ascertain that there is no quorum present?

The PRESIDENT *pro tem.*—It was apparent from the vote taken, that there was no quorum.

Mr. WEED—It was not ascertained that there was no quorum present, but that there was no quorum voting.

The PRESIDENT, *pro tem.*—The Chair stated at the time, that there was no quorum present, which statement must be regarded, unless it was challenged at the time.

Mr. FULLER—I rise to a point of order, that it is necessary that there should be a quorum in order to adjourn.

The PRESIDENT *pro tem.*—The motion to adjourn was lost.

Mr. ALVORD—For the purpose of making an explanation to the members of the Convention, I will make a motion for a call of the House, with the intention of withdrawing it, when I shall have concluded my remarks. The only way that we can get out of the dilemma in which we are now placed, by having a call or division,

by means of which it is ascertained that there is no quorum present, is either to adjourn from day to day, until the time fixed by the Convention shall come, on Wednesday next (when we shall adjourn as a matter of course, under the order of the Convention, until the succeeding Monday), or sit here and have a call of the Convention, and on that motion have the sergeant-at-arms get enough members together so as to adjourn beyond Wednesday, at 11 o'clock. With this explanation I withdraw the motion for a call of the Convention.

Mr. LAPHAM—There are two modes, as I understand it, in which the fact that a quorum is not present, can be ascertained; one is a call of the roll, and the other is by taking the ayes and noes. Taking a vote by count, is no test whatever.

Mr. C. C. DWIGHT—I rise to a point of order. that there is no question before the Convention.

The PRESIDENT *pro tem.*—The point of order is well taken.

Mr. WEED—I would like a leave of absence for myself until Wednesday.

The PRESIDENT *pro tem.*—There is no quorum present to grant a leave of absence.

Mr. ALVORD—I rise to a question of order and privilege. I give notice that on Monday next, immediately after the reading of the Journal, I shall move a call of the Convention.

Mr. AXTELL—I move that this Convention do now adjourn.

Mr. E. A. BROWN—I call for the ayes and noes on the motion of the gentleman from Clinton [Mr. Axtell].

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. McDONALD—I would like to know if this Convention can now adjourn, except from day to day.

The PRESIDENT *pro tem.*—It cannot.

The question was then put on the motion of Mr. Axtell to adjourn, and it was carried by the following vote:

*Ayes*—Messrs. Alvord, Andrews, Axtell, Bickford, E. A. Brown, Chesebro, Clinton, Cooke, Curtis, C. C. Dwight, T. W. Dwight, Eddy, Field, Fowler, Fuller, Goodrich, Gould, Kernan, Krum, Lapham, Lee, Miller, More, Paige, C. E. Parker, Prindle, Prosser, Rathbun, Rumsey, Schoonmaker, Seymour, Wakeman—32

*Noes*—Messrs. C. L. Allen, N. M. Allen, Baker, Bell, Cochran, Corning, Folger, Hadley, Hale, Huntington, McDonald, Root, Roy, Smith, Wales, Weed—16.

So the Convention stood adjourned.

MONDAY, JULY 1.

The Convention met at 11 o'clock A. M., the PRESIDENT *pro tem.*, Mr. FOLGER, in the Chair.

The Journal of Saturday was read by the Secretary, and there being no objection thereto, it was declared approved.

Mr. ALVORD—I gave notice on Saturday, on a question of privilege, that, immediately after the reading of the Journal this day, I should move a call of this House, and I now, in pursuance of the notice move a call of this Convention. I

understand, however, from gentlemen present here, that the probabilities are the call will not be seconded by the Convention, and under the circumstances attending our meeting, I beg leave to withdraw the motion.

Mr. E. A. BROWN presented the petition of A. M. Freedenburg and seventy-four other citizens of Martinsburgh, for a provision in the Constitution prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Select Committee on that subject.

Mr. FOWLER presented the petition of C. A. McNeal and others, for a provision in the Constitution, prohibiting the Legislature or municipal corporations from appropriating public funds to churches, schools, etc., of a sectarian character.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Also the petition of Miss Laura Bosworth and others, of Peterboro, for equal suffrage for men and women.

Which was referred to the Committee of the Whole, having the subject in charge.

Mr. SCHELL presented the memorial of members of the bar of the city of New York, for a provision that the code of laws known as the Revised Statutes, shall hereafter be known as the "General Statutes," and that it shall also prescribe the manner in which laws altering or amending the same, shall be enacted.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. WAKEMAN offered the following resolution:

*Resolved*, That it be referred to the Committee on the Bill of Rights, to inquire into the expediency of amending the Constitution so as to allow the party accused of crime to have the last appeal to the jury in reply to the counsel for the prosecution.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. FULLER offered the following resolution:

*Resolved*, That the Committee on the Judiciary be requested to examine and report upon the propriety and expediency of striking out the last paragraph of the 8th section of the 6th article of the Constitution of this State.

Which was referred to the Committee on the Judiciary.

Mr. T. W. DWIGHT — In the memorial of the Prison Association which I submitted to the Convention on Friday last, the name of one of the members of that committee was not attached, as he was not then in town. A telegram from him has been received authorizing his name to be attached, with the modification which I will read as follows:

"NEW YORK, JUNE 28TH.

I approve the proposed clause relating to prisons, striking out compensation. Provision should also be made for removal as in case of other officers for cause.

JOHN T. HOFFMAN."

I now move, sir, that this communication be added to the memorial, and that the memorial, with such addition, be printed in the Journal of Debates.

Mr. M. I. TOWNSEND — I do not remember

the length of the memorial; but my memory is that it is of considerable length.

Mr. T. W. DWIGHT — The gentleman is mistaken; it is not lengthy.

Mr. M. I. TOWNSEND — If that is so, I have no objection.

Mr. ALVORD — I would suggest to the gentleman from Oneida [Mr. T. W. Dwight], that the ordinary rule is not to print the memorial in the debates; it comes in as a separate document.

Mr. T. W. DWIGHT — It ought to go on the Journal of Debates. It is a subject that has received great attention from the committee of the association, and it is one of great importance, and ought to be printed.

The question was then put on the motion of Mr. T. W. Dwight, and it was declared carried.

The following is the memorial referred to:

GENTLEMEN OF THE CONVENTION: The memorial of the undersigned, a Committee of the Prison Association of New York on Prison Reform, respectfully report: That it is now more than two years since we were appointed by the Executive Committee of the Prison Association a committee to consider the present organization of our prisons, and to report a plan for their re-organization. During this period we have had the matter under consideration, and have been collecting facts and studying principles with a view to the satisfactory performance of the duty assigned us. In the prosecution of our labors, two of our number were commissioned in 1865 to visit other States and examine their prisons and prison systems. These gentlemen pursued the inquiries with which they were charged, in eighteen States, and to some extent in Canada also. They have embodied the results in an extended report, which is now going through the press, and will, as soon as issued, be laid upon the tables of the members. For further prosecution of the work required at our hands a commission was last year appointed, clothed with special power by the Legislature to call former, as well as present prison officers before them, and receive their statements under oath touching the condition and management of our prisons. Some twenty or more witnesses were examined, most of them gentlemen of great experience. A paper giving the results of the examination, together with the evidence itself as taken down from the witnesses, is printed in the twenty-second annual report of the Association, just printed, which report will also be laid upon the tables of the members. The undersigned do not propose to weary your honorable body with the details of the two investigations referred to. These will be found fully set forth in the reports, either placed, or to be placed, in your hands. We will content ourselves with a few brief references: In Pennsylvania party politics are not felt as a disturbing element in the management of the prisons. The Inspectors are appointed by the Supreme Court of the State, and they in turn choose the wardens; and these officers are retained in their positions without the slightest regard to their political opinions, as are also the subordinate officers appointed by them. As regards politics, it is much the same in Massachusetts. The appointment of the warden is made by the Governor and Council, and he holds



his office as long as he is found faithful and is willing to serve. He also virtually appoints his subordinates, in doing which he never takes account of their party connections, and never removes an officer on that ground. In most of the other States, as well as our own, political influence exercises much power in the government and administration of the prisons, although in none of them, we believe, does this influence make itself felt to the same extent or operate so disastrously as in New York. Here it is the dominating power. The prisons constitute a part of the political machinery of the State, and in their management the interests both of the convict and the community are often sacrificed to that of the politician. This is the basis of the system. It lies at the root of most of all the evils connected with it; and, in particular, it is the cause of instability in the tenure of office, and in that want of permanence in the executive administration which render improvement difficult and all approach toward perfection quite out of the question. We freely acknowledge the utility and importance of party politics. Within its appropriate sphere it has generous and noble functions. Without its restraining force, the ruling power, intoxicated with its prerogative, unaided by the vigilance of opponents and released from all feeling of responsibility, would degenerate into despotism, and tyranny would hold a perpetual carnival. But there are some things which it touches only to mar. There are precious interests in reference to which the warning must be sounded: "Touch not, handle not." Religion is one of these. Education is another, and surely the penal institutions of the State constitute a third, since they combine, in a high degree, the characteristics of both the others, being at once, if they are what they ought to be, religious and educational. One of the main objects we have had in view in prosecuting the work confided to us has been to devise some means of divorcing, as far as practicable, our prisons from politics, and also of freeing them from this baneful and blighting influence. This divorce can be effected only by a change of constitutional provisions, and for such change our resource must be to your honorable body. We have prepared the draft of the article to be inserted, if it meet your approbation, in the amended Constitution which you were chosen to frame. This draft has been submitted to the Executive Committee of the Prison Association, and has been unanimously approved by them. It is in the words following, to wit:

"There shall be a Board of Governors of prisons, who shall have the charge and superintendence of the State prisons, and power to appoint the wardens or principal keepers, the chaplains, clerks and physicians thereof, and the power of removing the officers above named, and the other officers in the same; but such removal shall be for cause, and the accused shall, in all cases, be entitled to be informed of the charges against him, and to be heard in his own defense. Said board shall also have the superintendence, with power of visitation, of all institutions for the reformation of juvenile delinquents and the prevention of crime. It shall consist of five persons, to be appointed by the Governor, by and with the

consent of the Senate, and shall hold office for ten years, except that the persons first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one of the persons so appointed shall expire at the end of each two years during the first ten years. Any vacancies in office afterward occurring shall be filled in the same manner. They shall receive such compensation as shall be established by law. The Legislature may confer such powers and impose such duties upon said Board of Governors in respect to the county jails, local or district penitentiaries, and other penal institutions within the State as shall be deemed expedient."

We respectfully submit the foregoing paper to your consideration, in the hope that it may so approve itself to your judgment that by your official action it may be incorporated into the fundamental law of the State. And your petitioners will ever pray, etc.

FRANCIS LIEBER,  
JOHN H. GRISCOM,  
E. C. WINES,  
THEODORE W. DWIGHT,  
N. F. ALLEN,  
G. B. HUBBELL.

Mr. WAKEMAN offered the following resolution:

*Resolved*, That it be referred to the Committee on the Judiciary to inquire into the expediency of abolishing the *Grand Jury* and substituting instead a number of persons, not exceeding five, to be selected by the Board of Supervisors of the several counties of this State.

Which was referred to the Committee on the Judiciary.

Mr. BAKER offered the following resolution:

*Resolved*, That the Committee on the Powers and Duties of the Legislature be requested to inquire into the expediency and justice of so amending the Constitution as to prohibit the Legislature from granting donations from the treasury of the State to any benevolent, charitable or religious institution or association, or to any sectarian college, school or association, except to the State Lunatic Asylum, the Idiot Asylums, and the institutions for the Deaf and Dumb.

Which was referred to the Committee on the Powers and Duties of the Legislature.

General Orders having been reached in the order of business,

The SECRETARY announced the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office.

Mr. M. I. TOWNSEND—I move to postpone the consideration of the report until the 9th day of July.

The PRESIDENT *pro tem.*—The motion of the gentleman from Rensselaer [Mr. M. I. Townsend], is hardly necessary, as there is no person present to move the consideration of the report.

Mr. M. I. TOWNSEND—It may be moved at some subsequent session, and my object is that it be postponed to a day positive.

The PRESIDENT *pro tem.*—The Chair did not understand that the motion of the gentleman was for a day certain.

Mr. BICKFORD—Would it not be well to go



into a Committee of the Whole on the report now, and give an opportunity to put in amendments for future consideration?

The PRESIDENT *pro tem.*—The motion of the gentleman from Rensselaer [Mr. M. I. Townsend], has precedence, being a motion to postpone to a day certain.

Mr. ALVORD—I hope my friend from Rensselaer [Mr. M. I. Townsend] will withdraw his motion. It strikes me that we cannot postpone the consideration of the report until Tuesday the 9th instant, without its being made a special order, and that would require a two-thirds vote.

Mr. M. I. TOWNSEND—No, the motion does not contemplate that.

Mr. ALVORD—I ask the decision of the Chair on that point.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the motion of the gentleman from Rensselaer [Mr. M. I. Townsend] does not require a two-thirds vote, inasmuch as it does not create a special order for the day named by him, the motion being only to postpone an order of business and not to set down for that day any particular subject for consideration.

The question was then put on the resolution of Mr. M. I. Townsend and it was declared carried.

Mr. FULLER—I move that this Convention do now adjourn to Monday evening at half-past seven o'clock.

Mr. CASSIDY—I move to amend by making the hour to which we shall adjourn, Wednesday at half-past eleven o'clock. There has already a vote been taken that when we adjourn on Wednesday, we adjourn at that hour until the following Monday. If we adjourn now until Wednesday, we will complete the order.

The PRESIDENT *pro tem.*—The Chair will state that if the amendment of the gentleman from Albany [Mr. Cassidy] prevails, it will be necessary for the Convention to meet again on Wednesday.

Mr. CASSIDY—But if we adjourn to half-past eleven on that day, the order of the Convention is that we adjourn at that hour.

The PRESIDENT *pro tem.*—The amendment of the gentleman would require the officers of the Convention to be here to adjourn the Convention on that day.

Mr. FULLER—The Chair decided on Saturday that it would be in order, notwithstanding the resolution adopted, to adjourn on Wednesday next, to move to adjourn over until a week from Monday evening. That being so, sir, the only object there could be in adjourning over until Wednesday would be to save our *per diem*. I for one, am not anxious for that kind of distinction. I was one of those who voted to continue the business of this Convention during three days of this week. I did it in good faith, for the purpose of forwarding the business in order that we might get through in time to submit our labors to the people at the next general election, which we shall not be able to do, unless we make progress faster than we have so far. If those who voted with me to continue the business of the session during this week had stayed in their places, we should have had a quorum, but a majority of them having

deserted, we are left without one. How they can reconcile their conduct to their conscience, I am unable to say; I will leave that to them. Inasmuch as we are left without a quorum, there can be no object in adjourning over from day to day until Wednesday, except to save our *per diem*, and, for one, I prefer to adjourn to-day until next Monday, at half-past seven o'clock.

Mr. CASSIDY—I withdraw the amendment offered by me. I had no such motive in offering it as the one stated by the gentleman from Monroe [Mr. Fuller]. I only wanted to conform the action of the Convention to the order of business already taken. I quite agree with the gentleman in his statement of how little commendable it is for members to avoid their *per diem* duties while getting their *per diem* pay.

Mr. WAKEMAN—Did I understand the Chair to say that it would be necessary for the officers of the Convention to be here on Wednesday next?

The PRESIDENT *pro tem.*—That it would be under the amendment of the gentleman from Albany [Mr. Cassidy].

The question was then put on the motion of Mr. Fuller, and it was declared carried.

So the Convention stood adjourned to Monday evening, July 8th, at half-past seven o'clock.

MONDAY, JULY 8, 1867.

The Convention met pursuant to adjournment, at 7½ o'clock P. M.

Prayer was offered by Rev. AMBROSE O'NEILL.

The Journal of Monday, July 1st, was read by the Secretary and was declared approved.

The PRESIDENT announced the following communication:

CONSTITUTIONAL CONVENTION, MARYLAND, }  
ANNAPOLIS, June 27, 1867. }

By the Convention:

ORDERED, That this Convention cordially responds to the proposal made by the Constitutional Convention of the State of New York for an exchange of Journal, debates and proceedings, and that the Secretary be instructed to send regularly to that Convention ten copies of the journal of proceedings of this body, and also to communicate the fact that this Convention has not provided for the publication of its debates, and therefore cannot comply with the proposed exchange in that particular.

By order, MILTON Y. KIDD, *Secretary*.

Mr. FERRY presented the petition of A. P. Chamberlain and two hundred and forty-four others, in favor of prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the select committee having the subject in charge.

Mr. FOWLER presented the petition of Gerrit Smith and one hundred and eighty others, in favor of female suffrage.

Which was referred to the Committee of the Whole.

Mr. COCHRAN offered the following resolution:

*Resolved*, That it be referred to the Committee

on Militia and Military Officers to consider the availability of the following amendment:

1. In the organization of the National Guard of this State, a list of reserve officers shall be included, to be composed of officers of the National Guard, who have served three years in some grade, and of United States volunteer officers who have been honorably mustered out of the United States service, and who are now, or may become citizens of this State.

2. Officers entitled to positions in the National Guard reserve list, shall be commissioned as officers of the National Guard reserves by the Governor, on their application to him, and shall have rank equal to the highest held previously by them, by brevet or otherwise, in the National Guard, State of New York, or in the volunteer service of the United States, and, in time of peace, shall be at liberty to resign from the same at their pleasure.

3. National Guard reserve officers shall be exempt from all military duty, except such as they may be placed upon, by the direct orders of the Governor.

4. National Guard reserve officers when placed temporarily on any important military duty, shall receive the pay and allowances of United States army officers of the same grades, while actually engaged upon such military service.

5. National Guard reserve officers shall be entitled to wear a badge of honor upon the breast, to be prescribed by the Governor.

6. In fixing the number of the National Guard, the Legislature shall specify that the same shall be exclusive of the National Guard reserve officers.

Which was referred to the Committee on the Militia and Military Officers.

Mr. LEE offered the following resolution:

*Resolved*, That the Committee on Canals be instructed to consider and report to this Convention, its opinion as to the expediency of inserting a provision in the Constitution prohibiting the Legislature from granting extra compensation to any and all parties contracting to do work for the State, or to pass any law authorizing any other body or board to award extra compensation for the same.

Which was referred to the Committee on Canals.

Mr. LEE, also, offered the following resolution:

*Resolved*, That the Auditor of the Canal Department be respectfully requested to report to this Convention, at his earliest convenience, the number and amounts of awards paid by him or his predecessors in office, from 1846 to 1866 inclusive, as extra compensation to contractors for labor and materials furnished to the State, by what authority said awards were made—to whom, and when they were paid.

Which was laid on the table under the rule.

Mr. GOULD offered the following resolution:

*Resolved*, That the Committee on the Bill of Rights be requested to inquire into the expediency of incorporating the "right to testify" among the natural rights of mankind.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. BARTO offered the following resolution:

*Resolved*, That it be referred to the Committee on Education, etc., to inquire into the propriety of abolishing the office of Superintendent of Public Instruction, and to return to and devolve upon the Secretary of State the powers and duties of such officer—or in the event of the continuance of the office, to make the same elective by the people for a term of three years.

Which was referred to the Committee on Education.

Mr. GOULD asked for a leave of absence for three days to attend the State Agricultural Society at Buffalo.

Which was granted.

On motion of Mr. HARRIS, the Convention adjourned.

TUESDAY, JULY 9.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. EDWARD BAYARD.

The Journal of yesterday was read by the Secretary and was declared approved.

Mr. SILVESTER—I desire to ask leave to correct the Journal of Friday, June 28. I was not in my seat when the Journal of that day was read, and this is the first opportunity I have had to make the application.

The PRESIDENT—The Journal of that day has been approved.

Mr. SILVESTER—I was not in my seat at that time and, I believe, that once before this practice has been adopted by the Convention.

The PRESIDENT—If there is no objection the Journal will be corrected.

Mr. SILVESTER—The amendment I wish to make is thus: the word "unless," should not be in the resolution. The object of the resolution was to make a person a competent witness upon a trial. I would like to have it appear on the minutes of to-day what the whole of the resolution was, which was referred to that committee.

The resolution corrected as desired by Mr. Silvester is as follows:

*Resolved*, That it be referred to the appropriate committee, to inquire into the expediency of providing in the Constitution that any member of the Legislature who shall receive or accept of, any money or valuable thing for his vote upon any measure, or who shall propose to enter into an agreement with any other member that either will vote in a particular manner upon any measure, if the other will vote in a particular manner upon another measure, if such proposition shall be carried into effect, shall be punishable by deprivation of the right to vote and hold office; but the person who has offered, or paid, or delivered such money or valuable thing, or who has assented to such proposition for such exchange of votes, if such proposition has been carried into effect, shall not be liable to any penalty or punishment, and shall be a competent and compellable witness upon the trial of the member who has accepted such money or valuable thing, or who has made such proposition.

Mr. JOHN MAGEE, a delegate, appeared in the Convention and was administered the consti-

tutional oath of office by the President, and took his seat.

Mr. KINNEY presented the petition of 112 citizens of Waverly, Tioga county, praying for some provision in the Constitution that shall prohibit the donation of public moneys to charitable institutions of a sectarian character.

Which was referred to the Committee on Charitable Institutions.

Mr. ENDRESS presented the petition of Emma C. Lawrence and twenty others, citizens of Westchester, asking the right of suffrage for women.

Which was referred to the Committee of the Whole.

Mr. MURPHY presented the petition of Thomas U. Cashow and eighteen others, citizens of Kings county, asking suffrage for women.

Which was referred to the Committee of the Whole.

Mr. FULLERTON presented the petition of Mary J. Quackenbush and fifteen others, citizens of Newburgh, asking suffrage for women.

Which was referred to the Committee of the Whole.

Mr. VAN CAMPEN presented the petition of Mary E. Mead and thirty others, citizens of Westchester county, asking for the right of suffrage for women.

Which was referred to the Committee of the Whole.

Mr. BEADLE presented the petition of Mrs. W. S. Shute, Mary C. Bristol, and one hundred and twenty others, citizens of Horse Heads, asking for equal suffrage for women.

Which was referred to the Committee of the Whole.

Mr. T. W. DWIGHT presented the memorial of the committee of the New York Prison Association on Pardons, by Dr. Francis Lieber, chairman.

Which was referred to the Committee on the Pardoning Power.

Mr. HAMMOND presented the petition of Mrs. J. C. Holmes and fifteen others, citizens of Westchester county, asking for equal suffrage.

Which was referred to the Committee of the Whole.

Mr. WALES presented two memorials relating to the re-organization of the Court of Appeals, etc.

Which were referred to the Committee on the Judiciary.

Mr. T. W. DWIGHT presented the memorial of a citizen of Utica, respecting the investment of the funds of educational institutions in registered bonds of the State.

Which was referred to the Committee on Education.

Mr. GRAVES presented two petitions, one from Jane E. Turner, Rev. C. H. Bebee, and fifty-six others of Bridgewater, Oneida county, and one from Julia M. Sherwood and twenty-two other citizens of Westchester county, asking for the right of suffrage for women.

Which were referred to the Committee of the Whole.

Mr. CHAMPLAIN—I hold in my hand a memorial from the citizens of the county of Allegany, earnestly remonstrating against the abandonment

or discontinuance of the Genesee Valley canal. I will briefly state its contents. This petition alleges that the original cost of that canal was very largely enhanced by the Stop law of 1842, in consequence of which many of its structures were deteriorated and went to decay. The petition further says there has been subsequently great improvidence, want of economy in the expenditures on it and in its superintendence and management. The petition further states that the section of country through which this canal passes, particularly the counties of Livingston, Wyoming, Allegany and Cattaraugus, have been subject of late years to sudden and violent floods, unprecedented in the history of the country, and that the structures upon this canal were defective and not capacitated to discharge the rapidly accumulated waters, in consequence of which they were torn out and the canal in many instances partially destroyed; that this accounts to a great extent for the decrease of tolls upon this canal in the last few years; that in consequence of the uncertainty of navigation, articles of freight have sought other channels in the market. The petition further states, that down the Allegany river to Pittsburg, lumber has been run in large quantities; that when the canal is saved this superfluous expense, which the petition charges should not be made a ground of odium against the canal, it will present a favorable exhibit and commend itself to the favorable consideration of the people of the State. The petition further states that it has developed to a large extent that section of the country, adding largely to the value of the property; that its abandonment would reduce the assessed valuation of the property in several counties very materially; that if economy can obtain in the management of this canal it will be a paying canal, and will add largely to the revenues of the State; that there are forests of pine and hemlock timber which will seek this canal as tributary to the Erie canal in the market, and that extensive coal beds have been opened in Pennsylvania which will furnish permanent and enduring freight. I ask the reference of this petition to the proper committee.

The memorial was referred to the Committee on Canals.

Mr. CHAMPLAIN—I have a memorial in my hand from numerous citizens of Northern Pennsylvania, bearing upon the question of the prospective trade of the Genesee Valley and Erie canals. In view of the source from which this memorial emanates and the important fact it suggests in reference to our canal system, I ask that the memorial be read.

The SECRETARY proceeded to read the memorial.

During the reading Mr. BERGEN moved that the further reading of the memorial be dispensed with.

Which was carried.

Mr. ENDRESS—As this is a subject of the last degree of importance, and one which is going to have an important bearing upon the vote upon the Constitution which may be proposed, equal to any other question, I move that this memorial be printed. I come, sir, from a part of the State which takes a deep interest in the Genesee Valley

canal, that is, the county of Livingston. The memorial contains an argument which will be sought for and gladly read by the people of Monroe, Livingston, Allegany and Cattaraugus counties, and I propose, by having it published, to put it into the hands of those citizens.

There being no objection the memorial was ordered to be printed, and referred to the Committee on Canals.

The memorial is in the words the following:

*To the Honorable the Constitutional Convention for the State of New York, assembled at Albany:*

The memorial of the undersigned, citizens of the county of McKean and Commonwealth of Pennsylvania, respectfully represent.

We have learned with sorrow and surprise that a proposition is now pending before your honorable body for a discontinuance or abandonment of the Genesee Valley canal.

We feel confident such a proposition would not for a moment be entertained if the people of your State and the members of your Convention were fully advised of its certain prospective financial value, its importance as a feeder to the Erie canal, and as affording the means of supply to your mechanical and manufacturing interests.

You cannot correctly judge of it by what it has done, or to this time has failed to do.

Its incomplete condition and small capacity for transportation has deterred parties who would desire to employ it from making the considerable outlays for placing freight on it, which would otherwise have been done, and which would at once be done if they could be assured it would be made a reliable means of transportation.

We beg leave, respectfully, to call your attention to a few facts:

The G. V. canal terminates at the Allegany river, with which it is united by a lock at Millgrove, one mile from the south line of your State. It practically terminates in Pennsylvania, ten miles south of the line of your State, as the river is navigable for boats for that distance, and has been constantly used for their transportation since the canal has been built. A steam tug is now making daily trips from the southern terminus of the canal ten miles up the Allegany river.

The county of McKean, in Pennsylvania, which lies immediately adjoining Cattaraugus and Allegany in your own State, contains extensive deposits of bituminous coal of superior quality for the forge, for gas, fuel and generating steam.

Its quantity and quality have been fully demonstrated, and though some parties who have made investments in coal lands in McKean county have been disappointed and deceived in the character of the lands they purchased, all who are at all conversant with this region admit the large extent and good quality of the coal. With the reasonable price afforded by water transportation, the demand for it in western New York and southern Canada will be only measured by the supply. It will be reached in ample quantities at the distance of fourteen to twenty-two miles from the G. V. canal.

A charter was procured from the Legislature of Pennsylvania at its last session, authorizing the improvement of the Allegany river from the termi-

nus of the Genesee Valley canal and the construction of a canal or railroad thence to the coal mines. It is confidently expected work will soon commence on this improvement, particularly if the capitalists who have it in contemplation can be assured the Genesee Valley canal will be held and maintained in a condition to render it a reliable means of transportation for the heavy freight which will thus be thrown upon it. It will be safe to say this improvement will give the Genesee Valley canal, in coal alone, one thousand tons per day, during the season of canal navigation, from the Bunker Hill mines, near Bishop's Summit. Immediately south of this lies the extensive coal fields of Elk and Cameron counties. There are now in full working operation not less than ten companies who are shipping by the Pennsylvania and Erie railroad, all of whom are earnestly desirous of sending their coal North to market, and would do so via the Genesee Valley canal, if it could be relied on. From these and the anthracite and bituminous coal regions further south, vast quantities will also be thrown upon this canal by the Buffalo and Washington Railroad which is to be immediately constructed. This railroad is now under contract and work will commence on it in this State as soon as the proper surveys can be made, engineers now being engaged in completing its location. It will connect with the P. & E. R. R. at Emporium, in Cameron county, and run north, crossing the Genesee Valley canal at Portville or Olean.

In addition to this freight, there will be afforded millions upon millions of lumber annually, this whole region being heavily covered with valuable timber. The country also abounds in iron ore which at no distant day will be extensively worked and will look to your State for a market.

There is now constructed and fully equipped, a first-class railroad, running from the Erie railway, at Carrolton, to the Lafayette coal mines in this county, a distance of twenty-five miles.

By this road, and using the Erie railway for the distance of eleven miles, the Genesee Valley canal is reached at Olean.

There are now organized at Lafayette six coal companies, "to wit:" The McKean company (bituminous), with a present capacity for producing and delivering by their lateral railroad one hundred tons per day, and they have prepared a place at Cuba for the transshipment of their coal from the cars to the boats of the Genesee Valley canal. The Lafayette coal company are now shipping one hundred and fifty tons per day, via Dunkirk to Buffalo and Rochester. This company shipped last year by the Genesee Valley canal one thousand five hundred tons, and would have shipped one hundred tons per day if the canal had been in good order, and would now ship three hundred tons per day if they had the means of cheap water communication. They also have a chute at Dunkirk for transshipment to boats on the lake.

The Bond Vein coal company are shipping fifty tons per day. The Kinzua coal company are prepared to ship seventy-five tons per day. The Longwood Coal Company are shipping fifty tons per day.

The Tunungwunt coal company have their



mines opened and are prepared to ship seventy-five tons per day.

It has been estimated by persons competent to judge, that from the Lafayette coal field alone there could be delivered next season two thousand tons per day, and much the greater part would seek a market by this canal if it could be relied on.

Connected with this memorial we send a map, showing very accurately the true position of this mineral region to your State and its public improvements, with distances, elevations, etc., to a careful examination of which we respectfully beg your attention.

SMITHPORT, July 5, 1867.

(Signed)

SETH A. BACKUS,  
and thirty-nine others.

Mr. C. E. PARKER presented the petition of citizens of Tioga county, on the subject of legislative donations to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BAKER presented the petition of D. C. Cox, and others, citizens of Montgomery county on the same subject.

Which took the same reference.

The PRESIDENT presented a petition of citizens of New York, asking that a separate clause be submitted as a part of the Constitution, to prohibit the sale of intoxicating liquors as a beverage.

Which was referred to the select committee having charge of that subject.

Mr. DUGANNE presented the petition of citizens of Kings county in reference to bribery and corruption.

Which was referred to the Committee on the Suppression of Official Corruption.

The PRESIDENT presented a communication from the Clerk of the Court of Appeals in answer to a resolution of the Convention adopted June 31st.

Which was referred to the Committee on the Judiciary.

Mr. M. I. TOWNSEND moved that the communication be printed.

Which was carried.

Mr. FERRY, from the Committee on Contingent Expenses, submitted the following report:

Your committee, to whom was referred the resolution of Mr. Hitchcock, requiring the Secretary of this Convention to procure twenty diagrams of this Chamber for each member, officer and reporter, respectfully report:

That upon the proper inquiry they have ascertained that the cost of each copy would be thirty cents, making the aggregate expense \$1,140, (eleven hundred and forty dollars).

These diagrams are regarded by your committee as more ornamental than useful, and they are unwilling, for obvious reasons, to advise the incurring of any expenditure of money which is not manifestly necessary. In the absence of such necessity, we need not discuss the question as to the power and right of this Convention to incur an expense of this character, further than to remark that it evidently was not contemplated by the Legislature when the act was framed under which we are now assembled.

Your committee therefore recommend the resolution be not adopted.

(Signed)

E. E. FERRY,  
*Chairman.*  
W. A. REYNOLDS,  
ROBT. COCHRAN,  
GEO. WILLIAMS.

Which was adopted

Mr. BICKFORD offered the following resolution:

*Resolved*, That there should be a provision in the Constitution substantially as follows:

It is hereby declared to be a right of the people of this State, at all times, and by all efficient means, to catch and take fish in any of the salt waters in or bordering upon this State, and in all arms of the sea, and rivers where the tide ebbs and flows, and in the waters of the lakes Erie and Ontario, and the rivers Niagara and St. Lawrence, and to sell and dispose of the fish so taken; and such right not to be restricted, except so far as may be necessary to prevent trespass and practices detrimental to this, and other industrial interests of the people.

Mr. BICKFORD—There are several committees to which this resolution might be referred; but I suggest that it be referred to the Committee on Industrial Interests.

The resolution was referred to the Committee on Industrial Interests.

Mr. STRATTON offered the following resolution:

*Resolved*, That the Comptroller of the city of New York be requested to prepare, and communicate to this Convention, as early as practicable, the amounts paid for the year 1866, for salaries of justices, judges, clerks, stenographers, officers, interpreters and attendants, and the amounts paid for stationery and contingent expenses, of the following named courts in the city of New York, stating the number of justices, judges, clerks and other attendants, of each court separately, and all other expenses of each court separately, as far as he is able to do so; and also whether said amounts are to be increased or diminished the present year, and how much, viz.: Supreme Court, Superior Court, Court of Common Pleas, Marine Court, District Courts, Police Courts, and the Courts of General and Special Sessions; and that he also report the amount of fees received from each of said courts during said year.

Mr. ROGERS—I move that the resolution lie on the table.

The resolution laid over under the rule.

Mr. FULLER offered the following resolution:

*Resolved*, That it be referred to the special committee on that subject, to inquire and report whether legislative corruption in this State is not largely, if not mainly due to the moneyed influences of overgrown corporations, particularly railroad corporations; and if so, what remedy can be devised for so great a mischief.

Which was referred to the Committee on the suppression of Official Corruption.

Mr. LEE called up the resolution offered by himself yesterday, as follows:

*Resolved*, That the Auditor of the Canal Department be respectfully requested to report to this Convention, at his earliest convenience, the num-

ber and amounts of awards paid by him or his predecessors in office, from 1846 to 1866, inclusive, as extra compensation to contractors for labor and materials furnished the State; by what authority said awards were made; to whom and when they were paid.

The question was then put on the resolution of Mr. Lee, and it was declared adopted.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That the Committee on Education be instructed to inquire into the expediency of permitting donors of funds devoted permanently to the endowment of educational institutions, to pay them into the State Treasury, to be invested in registered bonds of the State. Such bonds to be held by an officer of the treasury, who shall pay the interest or income of any such fund to the institution for whose endowment it is bestowed. The same committee shall also inquire into the expediency of permitting trustees of colleges, academies, etc., to invest their permanent funds in like manner, and of requiring a regular account of the amount and investment of the principal, and payment of the income of all such funds, to be published annually as an appendix to the Session Laws.

Which was referred to the Committee on Education.

Mr. GREELEY offered the following resolution:

*Resolved*, That the Convention now resolve itself into Committee of the Whole and proceed to consider the report of the Standing Committee on the Right of Suffrage.

The PRESIDENT—Will the gentleman from Westchester [Mr. Greeley] withdraw his resolution for a moment, to present a communication?

Mr. GREELEY—Certainly.

The PRESIDENT presented a communication from the State Engineer and Surveyor in answer to a resolution of the Convention, adopted June 26, 1867.

Which was laid on the table.

Mr FOLGER offered the following resolution:

*Resolved*, That the use of this chamber be granted to the American Equal Rights Association, for a meeting on the evening of Wednesday the 10th inst.

Mr. GREELEY—I object to the consideration of that resolution now, as I wish to ask the Convention to conclude its debates on that subject by that evening.

Mr. FOLGER—I will not ask for it if the chamber is occupied by the Convention.

Mr. ROGERS—I would ask if this does not require a two-thirds vote of this House.

The PRESIDENT—The Chair is not aware of any such rule.

Mr. ALVORD—I trust that the gentleman from Westchester [Mr. Greeley] will allow his resolution to lie over, because the fact is that, when we get through resolutions which are now the order of business, then this report will come up, as a matter of course, under the rule, without the necessity of any resolution upon his part; but now it will require a two-thirds vote to take up the report.

Mr. GREELEY—I must persist in my resolution; I waited until I thought there was no more

business before the Convention, and I trust the resolution will now be adopted.

The PRESIDENT—The Chair would inform the gentleman from Westchester [Mr. Greeley], that Rule 3 provides for the regular order of business, and that, except on days and at times set apart for the consideration of special orders, the order of business shall not be departed from except by unanimous consent.

The PRESIDENT proceeded to call the regular orders, and there being no further business,

The CONVENTION resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage, Mr. ALVORD, of Onondaga, in the Chair.

The CHAIRMAN—Under the rule, unless otherwise required by the committee, the report of the committee, as far as regards the article proposed, will be read by the Secretary.

Mr. GREELEY—I move that the reading be dispensed with.

Mr. E. BROOKS—I hope not. I call for the reading of the report, and hope it will be read.

The SECRETARY then proceeded to read the article proposed by the committee.

Mr. ROGERS—On that I call for the ayes and noes.

The CHAIRMAN—The Chair will inform the gentleman from New York [Mr. Rogers] that there is no question before the committee.

Mr. FOLGER—Are amendments now in order, or must the article be read by sections?

The CHAIRMAN—It must be read by sections.

The SECRETARY proceeded to read the first section as follows:

"§ 1. Every man of the age of twenty-one years who shall have been an inhabitant of this State for one year next preceding an election, and for the last thirty days a citizen of the United States, and a resident of the election district where he may offer his vote, shall be entitled to vote at such election, in said district, and not elsewhere, for all officers elected by the people.

"*Provided*, That idiots, lunatics, persons under guardianship, felons and persons convicted of bribery, unless pardoned or otherwise restored to civil rights, shall not be entitled to vote. No person who shall at any time within thirty days next preceding, have been a public pauper, shall vote at any election. No person who shall receive, expect to receive, pay, or offer to pay, any money or other valuable thing to influence or reward a vote to be given at an election, shall vote at such election; and, upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm before such inspectors that he has not received, does not expect to receive, has not paid nor offered to pay, any money or other valuable thing to influence or reward a vote to be given at such election. Laws may be passed excluding from voting at an election every person, who shall have made, or who shall be interested in, a bet or wager depending upon the result thereof."

Mr. FOLGER—I move the following amendment.

The SECRETARY proceeded to read the amendment as follows:

On page 2. Strike out lines 11 and 12 down

to and including the word "election" in the 12th line.

Mr. CARPENTER—I wish to offer the following amendment.

The SECRETARY proceeded to read the amendment as follows;

Amend by adding to section 1 the following words:

*Provided, further,* That any person not a qualified voter at the time when this proviso shall take effect shall not thereafter vote at any election, unless able to read the Constitution in the English language, and write his name; and inability so to read or write shall be cause for challenge at the polls; but this proviso shall not apply to any person prevented by physical disability from reading or writing, as aforesaid.

The CHAIRMAN—The Chair will inform the gentleman from Dutchess [Mr. Carpenter], that his proposition is not germane to the proposition offered by the gentleman from Ontario [Mr. Folger].

Mr. CARPENTER—I wish to offer that as a substitute for the proposition of the gentleman from Ontario [Mr. Folger], and while proposing to amend section 1 of article 2, as reported by the committee, by adding thereto the words of this proviso, I desire to state that if the proposition shall be approved by the Convention, it seems proper that it should be submitted separately to the judgment of the people, so that, standing entirely upon its merits, it may receive their indorsement, or fail by the expression of their disapproval. The article reported by the committee as a substitute for article 2 of the existing Constitution, provides that "every man of the age of twenty-one years who shall have been an inhabitant of this State for one year next preceding an election, and for the last thirty days a citizen of the United States, and a resident of the election district where he may offer his vote, shall be entitled to vote at such election, in said district, and not elsewhere, for all officers elected by the people." To which general provision an exception is made of certain classes notoriously incompetent, of persons convicted of heinous crimes, and of persons under restraint or a contingent undue influence. The minority of the committee have offered as an amendment to the report of the majority the following resolution:

*Resolved,* That a proposition further to extend the elective franchise to colored men be submitted to be voted on separately from the rest of the Constitution."

Since, in the proposed article, complexion is not made a disqualification, and therefore the elective franchise could not be further extended to colored persons than by the terms therein expressed, I think I am correct in construing the minority report to be substantially a proposition to retain article 11 of the existing Constitution, and to submit separately for adoption or rejection by the people, a provision conferring upon colored men further elective privileges than are now allowed to them. From a careful reading of the two reports emanating from the Suffrage Committee, I have been unable to discover any discordance of views upon a question of principle that may not be

effectually harmonized by the adoption of this amendment, while concurring mainly in the majority report, and believing that the great principle of manhood suffrage should be distinctly enunciated as the rule, a course dictated not only by sound logic, but by the precedent established by the Convention of 1846, still, if any modification of the general rule not based upon crime or what is generally deemed absolute incompetency is to be recommended for adoption, I regard it not improper, that such modification should be submitted separately for the independent consideration of the electors of the State. For the purpose, therefore, of enabling this Convention to unite upon a proposition, modifying the general rule of suffrage—a proposition founded upon principle, and which can be sustained alike by sound reason and State policy, I have offered this amendment, and shall state briefly the reasons that have convinced me that its adoption would be not only proper but exceeding desirable. The justice or injustice of any restriction upon suffrage depends upon the fact whether the exercise of the elective function be an inherent right or a privilege. If it be a right, absolute and inalienable, then every proscription of its exercise, founded upon age, or class, or sex, or conduct, is not only arbitrary but tyrannical. Under our system of government, which allows the widest latitude of rights and privileges, there is no right, not even to life itself, that is perfectly absolute. The very term and every page of the world's history prove the elective franchise to be a privilege and not a right. The power to prescribe qualifications in an officer has never been disputed, then why with equal propriety may they not be prescribed for an elector? The rule is, that every person may engage in honorable labor, and control his earnings, but the Constitution provides that the lawyer must exhibit a certain degree of learning and intelligence before being admitted to practice in the courts, and this limitation has never been termed oppressive. There is hardly a right upon which either as a punishment or a protection, expediency and state policy have not put a limit. In all matters not of inherent God-given right, the authority of the State to exercise such discrimination as will inure to its own protection, cannot be seriously disputed, and certainly nothing is of more vital importance to the State, or more desirable for it to secure by wholesome regulation than an intelligent and spotless exercise of the elective privilege. Granted, then, that the people may justly restrict suffrage, it does not follow that the restriction could be vindicated except upon an equitable basis and for the public welfare. I read from the minority report for the purpose of correcting an erroneous impression therein contained, and of demonstrating that the people have sought merely intelligent suffrage, although by a different test than the one now proposed. In that report is the following statement:

"As respects the extension of suffrage to colored the same as to white citizens of the State, the undersigned submit that if the regeneration of political society is to be sought in the incorporation of this element into the constituency, it must be done by the direct and explicit vote of the electors. We are foreclosed from any



other course by the repeated action of the State. In 1846 this question was submitted in a separate article to be voted on, at the same time with the Constitution itself; and was negatived by a vote of 223,884 to 85,306. It was again submitted in 1850, and was again defeated by a vote of 337,984 to 197,503. A similar submission was provided by a concurrent resolution of the legislature of 1859, which, by the neglect of the State officer to provide for its publication, was defeated; but its fate may fairly be regarded as further evidence of the indifference of the public toward a change. The undersigned are of opinion that the Convention will depart from its representative character if, after these repeated manifestations of the popular will, it should enact this extension of the suffrage without such a separate submission."

The fact that equal suffrage to colored persons was defeated by a large majority of the votes cast upon that question in 1846, and also upon a subsequent submission in 1860, does not prove that the people of this State regard color as a disqualification for the elective franchise; because the Constitution adopted in 1846 allowed to colored citizens who had paid tax upon freeholds worth \$250 the privilege of voting. If color had been the objection, suffrage would not have been conferred upon any of that class. Nor does it follow from the result just stated, that the people desire a property qualification; because, if in favor of such a qualification, they would have applied it to all classes and complexions; but in 1826 the electors of the State decided almost unanimously against suffrage by chattels instead of by men. There has never been an election held in this State but that colored men have been allowed to vote, and by the adoption of three separate Constitutions, the people have thrice proclaimed the fact that color should not be made the test of voting capacity, and that the Declaration of Independence was not a brazen falsehood. At three separate elections, in 1826 and in 1845 and '46, they sought to declare that men and not money should control the government, and few will now be found to deny that the most lowly citizen is entitled to equal protection and equal privileges with the most opulent, and that the powers of government are needed principally for the protection of the weak against the strong. The vote against equal suffrage to colored persons proved only that some of that class were not regarded as sufficiently intelligent to properly discharge the duties of an elector, and the possession of property, that most unreliable of all indices of mental vigor or culture, was retained as a condition, not for the purpose of representing property in preference to humanity, but in deference to the antiquated political heresy, originating at a period when learning was confined to the monasteries, that the number of an individual's ideas could be determined by counting his coin, and that wealth and wisdom were synonymous terms. But in this age, marked by the general diffusion of letters, by enterprise and monetary fluctuations, an argument for property as a test of knowledge would be an argument to prove that the child of opulent parentage is a sage from birth, like Minerva, the personified symbol of wisdom springing full-armed from the brain

of Jove, and that a larceny of goods is necessarily a taking of reason. The only true test of intelligence is that which can be applied directly to mind itself, and be answered from the brain. Of every ten opponents of equal suffrage, at least nine, and perhaps the ten, will declare that they oppose it because they know some colored men whom they regard as incapable of voting intelligently. Hardly in one case out of a hundred will either color or poverty be mentioned as a disqualification. Therefore, every other reasonable hypothesis being excluded, an alleged want of intelligence in a portion of the colored population appears to be the sole reason why the elective franchise has been denied to many as well qualified for it as the Caucasian race. If, then, ignorance in a colored citizen renders it unsafe for him to deposit the ballot, is not ignorance in any other citizen equally dangerous to the welfare of the State? Consequently, if there is to be any modification of the elective franchise, let it be based upon a groundwork of principle, looking only to intelligence and intrinsic worth, and making no invidious distinction between those equally capable of its exercise. This proposition has commended itself to my judgment:

1. Because under our system of elections, by secret ballot, it is absolutely impossible for a citizen to vote intelligently unless he can write, or at least read the words contained in his ballot. Our elective system is founded upon the theory that every elector will indicate at the polls his preference for officers or principles, in such a manner as not to be subjected to an undue influence, and so that his action shall not be elsewhere called in question. The person who is unable to prepare his own ballot makes his exercise of the elective privilege a mere chance in a lottery. He might with equal propriety draw from a wheel the folded ballot that he is about to deposit; though intending to vote for John Doe, he can never testify, nor feel absolutely certain, that he did not vote for Richard Roe. The purity of the ballot-box has been aptly termed the palladium of our liberties, and in a Republic the government is simply an assertion of power by a majority of electors. But what evidence have we that the result of any election is an expression of opinion by the majority, so long as, in the very nature of things, a portion of the electors cannot know what opinion they have expressed? Perhaps next to the actual and corrupt purchase of votes, nothing has contributed more to election frauds than the struggle for that class who must necessarily vote at the dictation of others. Through ignorance, the door is opened wide for a deception more benignant than statutory crimes. The trusted guardian of another's principles is given a double voice and a double power to be used either for a good or an evil purpose—and where is the difference in effect whether a person casts five votes in his own name, or one for himself and four for his political wards. It is evident, therefore, that for the safety and welfare of the State, the elective system should be so regulated as to require from any person merely the expression of his own opinion, and not to render necessary the delegation of that privilege to another.



2. A very great advantage to be derived from the operation of this amendment would be the stimulus given to education, not that education under our democratic system should be made compulsory, but the State, for its own protection and prosperity, should give to it a proper encouragement. The State has already provided opportunities for a common school education to all her children, and further than this it seems proper that the public purse should not be opened. The State has done this for two reasons, both in effect the same:

1st. Because it would be better defended and protected by an intelligent people.

2d. Because that knowledge which would enable a person better to advance his own interests would make him at the same time a more useful public citizen.

This provision is not in the nature of a penalty, because no person is required to attend school or to learn, but it is in effect saying to the young men, every opportunity is offered, and you have plenty of time to acquire an education; but, if with these opportunities you neglect to advance your own interests by preparing yourselves for the ordinary business of life, you are not proper persons to be trusted with the government of the State. And surely the liberties of the people cannot be intrusted to the care of any person who, now arriving at manhood, has not learned to read the English language, or to write his name. Under the operation of this proposed provision there is hardly a young man in the State but that in less than two years would be able to read and write. The effect, therefore, would be to prepare a certain class to become better citizens, or by limitation of suffrage, to render them less powerful for harm. The operation of this measure would not be harsh; no penalty is exacted, and the number to be effected is comparatively small. It is not retrospective, as it deprives no citizen of a privilege which he has hitherto enjoyed, and even in its future application it looks with charity upon those whom misfortune has deprived of the means of acquiring or of displaying the required proficiency. It will go into effect at a time, and its provisions are such that those who have contributed, either by their means or personal services, to carry the Republic safely through its struggle for integrity, will still continue, to the same extent, to direct its destinies. The infant in his cradle, twenty-one years ago, when the last Convention was held, has become the full grown man and the elector of to-day. During this long intervening period the arts and sciences have progressed and society has become enlightened to such an extent, that the people must be prepared for greater enlightenment in the government—not that principles and rules of right are fluctuating, but because prejudice and bigotry gradually vanish as the light of reason grows brighter, and a fuller measure of justice can be safely meted out to a people that have become better educated in truth. Probably, however, in this body, there are delegates who will in some instances refrain from advocating propositions that seem more equitable than certain existing provisions of our organic law, for the simple reason that the mass of the people are unpre-

pared to indorse them, and they must be postponed until a more propitious hour. The homely apothegm "Half a loaf is better than no bread," is as true in the political as in the domestic world. And that is not a wise statesmanship that rejects a beneficent measure because it falls short of what is desirable, but at the time unattainable, nor is he a true friend of progress who seeks to accomplish in a day the work properly allotted to years. Now it is desirable that every citizen should be an intelligent elector, but he cannot be made such by being simply so declared; but by patiently waiting under the operation of the proposed test, but few years will elapse before intelligent suffrage, at least, by male citizens of lawful age, will become universal. And if it be true that the extension of suffrage is resisted on the ground of incompetency, the people of the State will have, through the separate submission of this question, an opportunity to render a distinct verdict thereon, and whatever the verdict may be, the matter of the elective franchise will be decided and settled for years at least. If the objection be to incompetency, the failure to submit a limiting clause based upon sound principles of general application, may endanger the adoption of any desirable reforms submitted in the Constitution itself. The objections that may be urged to this amendment are referred to in the report of the majority of the committee, and are substantially these:

1. Literary acquirements are not a criterion of voting capacity.

2. Some who pay taxes would not be allowed to vote.

3. Corrupt inspectors of election would violate the law for partisan purposes.

What force there may be in these objections, it is proper briefly to consider. As to the first, it may be admitted that some men of the highest literary attainments are perfectly unreliable in matters of business, and evince no practical knowledge of the affairs of government, and that some of the best minds of the State have not received even the rudiments of an education, but these admissions prove nothing. With the present opportunities for education, it will hardly be disputed that the number of teachable young men approaching the age of twenty-one, who cannot read and write, is very limited, and the mental capacity of those who have not mastered the alphabet is doubtless little superior to their proficiency. I do not mean to say that all who can read and write are for that reason intelligent electors; but I do say that it is among the impossibilities for a person to vote both intelligently and independently by ballot unless he can himself prepare the ticket. This proposition will not admit of argument—it is a postulate. Under a *viva voce* system of elections the same rule would not apply. Now, what milder test of intelligence can be devised, so as to include every one possibly competent, than to ascertain the voter's ability to read the Constitution and write his name. Perhaps it may be thought a more serious objection that certain tax payers would not be allowed to vote. Undoubtedly the amount of tax paid by this class would be exceedingly small, but if a single farthing were unjustly taken, the crime would be as great

as though it were a million. Still it is difficult to discover greater iniquity in taxing a person incapable through prescribed forms of expressing an opinion, than in taxing him who has voted against an expenditure which he conscientiously regarded as unlawful and unjust. But in either case the individual, if he expects to continue a member of society, must submit to what is deemed for the greatest good of the greatest number. The cry of "no taxation without representation" was a watchword in the revolution; and it has descended to us sanctified by the hallowed history and tradition of that period. Converted into a maxim, it should be retained and perpetuated; for although like all generalities, not strictly true, it embodies a principle that should not be ignored in government. States and communities, however, never have, and probably never will act strictly upon the rule there asserted. There is not a single class deprived of suffrage by the article proposed by the committee (except paupers, and they sometimes ought to be taxed) but that are liable to taxation. Women, including mature maidens and widows, are non-voters, but nevertheless tax payers. Minors are subject to taxation, and so are aliens holding real estate, and this list could be extended to a formidable catalogue of special cases. By act of Congress all incomes derived in the United States, whether by citizens or aliens, whether by residents or non-residents, are subject to taxation. We are often misled by high sounding terms. The just and unconditional rule is not "there shall be no taxation without representation," but it is this "there shall be no taxation without adequate protection," and taxation of non-voting classes has been fully justified on the ground that the taxes assessed upon them are but a just compensation and equivalent for the protection afforded them by the government. And if in this case any complaint should arise at bearing the burdens imposed by others, such complaint can properly come only from the delinquent himself, in whose power it lies to give a speedy application of the remedy. This question of taxation and representation, like all other questions, is subject to regulation, the State having reference to its own safety perpetuity. Now, there is the third objection, to wit: the bias and improper conduct of inspectors, and this, of course, has reference to the practical working of the law; and so long as men are human, and not angelic, we must expect frauds and misdemeanors. There are, doubtless, frauds in registrations, frauds in depositing ballots, frauds in the canvassing of votes, but there is only one practical rule of constitutional legislation, and that is based upon the presumption that every sworn officer will do his duty. Whenever we overlook this rule, and launch out into the field of supposition and speculation as to what officers may do, we are brought to an abrupt pause. It is of course, wise to act on the side of safety, and guard, if possible, every avenue to fraud, but the wheels of government would soon cease to revolve if legislators were to hesitate in the introduction of a salutary measure lest some depository of a trust should prove faithless. Bias and fraud may have invaded the jury-box, and deprived a citizen of his rights—

the court, by an erroneous opinion, may have subjected a suitor to costs and delayed or thwarted the due course of justice, but these are not sufficient reasons for abolishing both court and jury. Bribery and corruption may in some instances have crept into legislative halls, and written upon the statute book a pernicious enactment, but it does not therefore follow that all legislation should be prohibited, and society permitted to relapse into a state of anarchy. It will not answer for the builder to reject from the temple a fitting stone lest it should be marred by Gentiles. A word upon the practical operation of this amendment, and I will not further delay the Convention. The test can be applied at the polls, and if the officer should be guilty of occasional fraud the citizen certainly could not be. If, through collusion with the inspectors, it is feared that an illegal voter would be permitted to repeat from memory words that he could not read, authority could be given the challenging party to amplify the text by the selection of another clause. But this matter is placed under the control of the Legislature by the provision authorizing that body to make laws for ascertaining by proper proofs, the citizens entitled to suffrage, and it is to be presumed that that body can so provide, that honesty will be the rule, and fraud the exception, in the execution of this portion of the organic law. The only other objection that could possibly be urged, is the abuse of the challenging power, causing delay and vexation at the polls. This could be done to a slight extent, but, it is not for the interest of any political party to attempt such abuses, and under existing laws, it is not impossible for similar annoyances to be practiced, nor can there be devised, any system however carefully guarded, that the machinations of the vicious may not abuse. Here, then, is proposed a regulation of suffrage that recognizes no superior race or privileged class in the human family. Striking at an undoubted source of corruption, it will tend to elevate and purify the ballot box. By it the State gives a gentle and effectual encouragement to the education of all her sons. A rule of action is suggested against which can be urged fewer objections than against almost any other part of our elective system. A principle is embodied, which regards the intrinsic merits of the citizen and not his pecuniary accidents. While property has, in some instances, been practically valued higher than manhood, I think in the light of to-day we need not hesitate to pronounce, not money, but intelligence, the superior foundation stone of government. Every consideration, whether of right or of expediency, and every assurance, excepting only that guaranteed by local experience, favors this proposition, and is not the principle worthy of a trial. And if, through the operation of causes which human foresight cannot divine, this measure upon trial should fail of practical benefit, we shall, by its submission, have an opportunity to learn one lesson of great value for the future, for the people will decide whether or not the ballot-box shall be used for obtaining a correct expression of opinion, and whether they desire the government to be conducted by chance or by system, by money or by intelligence.

Mr. HAND—I would ask the gentleman from

Dutchess [Mr. Carpenter] to withdraw his proposed substitute and introduce it as an independent proposition. I desire to vote upon both propositions, and I hope a vote will be had upon each of them separately: but because the proposition of the gentleman [Mr. Carpenter] is in no sense a substitute for the amendment offered by the gentleman from Ontario [Mr. Folger], and has no relation to it, but relates to a different subject I hope the amendment will be withdrawn.

Mr. GREELEY—I trust the committee will allow me now to say a few words generally of the course I intend to pursue in regard to the report before us, and then to make a very few remarks in reply to the able speech of the gentleman from Dutchess [Mr. Carpenter]. In the first place, it has been indicated to me by the majority of the committee that they expect of me the general defense of our report. I propose, if the Convention will allow me, to do that, in remarks which I shall make at the close of the debate, in Convention, and not in Committee of the Whole. I do not propose to meet every objection point by point, nor to make a speech in reply to every attack on the report, because that would require me to occupy such a portion of the time as no member, not even the chairman of a committee, has a right to claim. I shall, therefore, reserve my general defense of the views embodied in the report of the committee for the close of the debate, if the Convention will allow me to close it, after all the amendments shall have been considered in committee, and when the subject is finally before the Convention. I give notice now that I shall ask the committee to sit out the debate on this report to-morrow night—I mean the debate which shall precede the discussion in the Convention. For whatever may be decided in the Committee of the Whole will not be conclusive, but will be reviewed in the Convention.

Mr. VEEDEK—I desire to rise to a point of order. I do not understand that the remarks of the gentleman from Westchester [Mr. Greeley] apply to the subject now under consideration in Committee of the Whole.

The CHAIRMAN—The gentleman from Westchester [Mr. Greeley] is not strictly in order.

Mr. GREELEY—I think, sir, it was my right to open the debate, and to that end I tried to get the floor when the Convention went into Committee of the Whole. I simply desire to give notice that I shall ask the committee to sit out the debate on this report to-morrow. And now, with regard to the proposition offered by the gentleman from Dutchess [Mr. Carpenter]. He proposes that the amendment offered by him shall be submitted to a vote of the people as a separate proposition. The committee have had this matter very fully under consideration, and they decided that they would propose *no separate* submissions of questions to be determined by the people. Gentlemen must be aware that such submissions tend to confuse, and not only confuse, but alienate the people. If we should go to the people with a Constitution submitted in pieces, it would almost certainly be voted down. I am opposed to all proposals for separate submissions, because, if the plan is adopted, the people will vote down the Constitution which we shall submit to them. I have

known of two or three instances where Constitutions submitted in this manner have been voted down, and it will almost always be so, where Constitutions are submitted in patches. If you choose to have a separate submission next year, and let the people then decide on the proposition, very well. Our committee was very decided on this point. We wished to submit the Constitution that should be framed, to the people of the State, with this question, "Is this Constitution preferable to the one you now live under? If so, vote 'yes,' if not, vote it down." If we send out a Constitution with strings of separate submissions hanging around it here and there, that Constitution will not be accepted. The people will say there is too much complexity and convolution of one thing with another. They will say, "If the Convention is capable of making a Constitution let them present one, and we are capable of deciding whether we like it or not." But here is a proposition for a separate submission of this proposed section, and very likely of others, for adoption or rejection by the people; so that a man cannot tell what he is voting for. He votes for a proposition and it is carried; but another proposition, which he votes against, is also carried; and thus the Constitution becomes something which he does not want, and which he would rather have had rejected. I say that these separate submissions have always been regarded with disfavor by the people, as they were at the time of the ratification of our present Constitution. I trust we will have none of them. I thought that the report of the committee was not fairly treated by the gentleman [Mr. Carpenter] in his remarks. I will, therefore, read from the report, to allow members to judge whether we, in effect, charged that inspectors of election would be guilty of fraud. The committee say:

"Nor have we chosen to adopt any of the schemes of disfranchising illiterate persons which have been referred to us. We freely admit that ignorance is a public evil and peril, as well as a personal misfortune, and we are ready to march abreast with the foremost in limiting its baleful influence. But men's relative capacity is not absolutely measured by their literary acquirements; and the State requires the illiterate, equally with others, to be taxed for her support, and to shed their blood in her defense. We prefer that she shall persist in her noble efforts to instruct and enlighten all her sons by means less invidious and more genial than disfranchisement. Were there no other consideration impelling to this decision, we should rest on and defer to the forcible truths, that ability to read and write is not absolute, but comparative; that inspectors of election are fallible and swayed by like passions with other men—and that they might be tempted, in an exciting and closely contested election, to regard with a partial fondness, almost parental, the literary acquirements of those claimants of the franchise who were notoriously desirous of voting the ticket of those inspectors' own party, while applying a far sterner and more critical rule to those who should proffer the opposite ballots."

There are times when the contest is so close in this State that less than one per cent. of the entire vote will elect a Governor, or an electoral



college. Men are challenged in a given district as to their ability to read and write. The board know perfectly well how many of the challenged voters are intending to vote the ticket of the majority of that board, and how many of them will vote the opposite ticket. I ask, if you do not put your inspectors in a most invidious and disagreeable position? A man comes up and says, "That is the ticket, sir; I am voting for your party; here it is." "Stop! you are challenged." He undertakes to read and write; and the board decides that he does not read well enough (and it must be a matter of comparison of degree whether he does or not) to be a voter, and they reject the vote, although it is a vote offered for their own party. In a moment, another man comes up; he is known to vote the opposite ticket; he is challenged, and he undertakes to read and write, and accomplishes something which he calls reading and writing. Do you not put the board in a most invidious position, and is it not human nature, that they will look a little more kindly, a little more encouragingly, upon the literary efforts of a man who is going to vote the "right" ticket than if he were going to vote the opposite ticket? Let us look at this matter of challenging. The committee desires that there may be the fewest possible grounds for vote-challenging at the polls. Settle beforehand who are entitled to vote and who are not. Let all be done coolly, calmly, and dispassionately, away from the crowd and heat and noise of an election. Let the board, deliberately sitting as registering officers, quietly decide who are and who are not voters. I would not have any man challenged except specifically. My way would be to have no man challenged except on the oath of an elector. You and I have seen at the polls, many times, challenges which were willful, wanton, mischievous, annoying and exasperating. Suppose you and I go to vote. There is a crowd at the polls. Your party or my party have two hundred majority in that district. The challengers of the minority are instructed to delay voting as much as possible. At the last Presidential election, there were thousands who were ready and anxious to vote at the polls in New York city, but who could not vote, and were turned away. An eminent delegate in this Convention [Mr. Opdyke] was thus deprived of his right of suffrage. Suppose the challenger were instructed to challenge everybody as not knowing how to read and write, and by that means he should keep out three hundred votes, he would probably at least reduce a hundred the majority of the opposite party. I dread these numerous challenges. They will create mischief at the polls. You may be challenged, I may be (and I am sometimes said to write illegibly, by men of bad taste). [Laughter.] Who does not see that this is a very dangerous and mischievous power to put into the hands of challengers to object to your vote and mine on the ground that we do not know how to read or write; for boards of inspectors are men, like you and me—partisan, if you please—and the majority will have their preferences, and they will be accused of favoring their party if they decide that a challenged voter of the opposite party does not read and write well enough

to vote. I trust the Convention will be careful about interpolating this dangerous provision into the Constitution.

Mr. GRAVES—I desire to ask the chairman of the Committee on the Right of Suffrage whether he intends to make an additional report on the resolution that was submitted, and which will be found on page 45 of the Journal.

The CHAIRMAN—The Chair will inform the gentleman from Herkimer [Mr. Graves] that that question is not now before the Committee of the Whole; therefore his inquiry cannot be made unless by permission of the Committee.

Mr. GREELEY—I will answer that question in the proper time, when the proposition is made to amend.

Mr. SPENCER—I desire to submit to the gentlemen of the committee who are discussing this question, whether it is not premature to now discuss a separate submission of the negro suffrage question. Toward the close of the proceedings of the Convention of 1846, after the framing of the Constitution was pretty much perfected, a committee was appointed for the purpose of proposing a plan of submission to the people. It is proper that that mode should be adopted now. Therefore, I suggest whether this whole question of separate submission had not better be deferred until it properly comes up in that shape. It will save a good deal of the time of the committee, and leave time to properly frame the article under consideration.

Mr. FOLGER—I desire to ask what would be the effect on the amendment I proposed if this substitute should be adopted.

The CHAIRMAN—The Chair is of the opinion that under the rule which has governed in all cases of this kind, both propositions are before the committee, and the last one being voted upon, whether it is carried or lost would not necessarily carry with it or have any effect upon the proposition of the gentleman from Ontario [Mr. Folger], which is separate and distinct.

Mr. FOLGER—And it can be renewed at any time.

The CHAIRMAN—It is before the committee, and in the event of the one proposition being carried or lost, the Chair would still consider it its duty to put the proposition of the gentleman from Ontario [Mr. Folger] before the committee.

Mr. BICKFORD—Is it in order to offer another amendment?

The CHAIRMAN—The Chair is of the opinion that, there being two amendments pending before the committee, it is not in order now to offer another.

Mr. BICKFORD—I would inquire of the gentleman from Dutchess [Mr. Carpenter], through the Chair, whether he intends that persons shall write their names in the English language? It is well known that there are a great many persons of foreign birth (for instance, Germans), who write their names in such a manner that no Yankee can read them. No inspector of election, unless he were a Dutchman or German, would be able to read them and say that they were not the handwriting of their names. It seems to me, therefore, for that reason, if for no other, the proposition of the gentleman should hardly be entertained by



the Convention. It certainly ought to specify what language is intended to be written.

Mr. CARPENTER—The English language, if you choose. I do not think it is a very practical question, any way.

Mr. BICKFORD—There are many men well educated in foreign languages who are incompetent to write their names in the English language, and yet, are intelligent men, capable of writing their names and reading in their own language.

Mr. M. I. TOWNSEND—I am opposed to the proposition of the gentleman from Dutchess [Mr. Carpenter], for the reason that I believe his doctrine is a great political heresy. The doctrine I refer to is the doctrine on which the gentleman in his remarks seems to base the proposition which he has presented. I differ entirely from the gentleman in the idea that he presents, that voting—the exercise of the *elective franchise*, is not a matter of right. While I have no right to criticise the opinions of gentleman upon this floor, my friend from Dutchess [Mr. Carpenter] will allow me to say that I am sorry it should first be announced upon this floor, by a gentleman professing the same political faith with myself, that men have not the right to participate in the administration of the government under which we live. This, sir, was not the doctrine of our fathers. When this government was formed—when our fathers found it necessary to revolt from the British government—by common consent, they laid down a very different doctrine. And that doctrine was enunciated from the pen of the father of republicanism—the same republicanism which I profess to-day; the republicanism in which I was educated, and, by the blessing of God, the republicanism in which I hope to die. And it was this: “We hold these truths to be self-evident, that all men are created equal; that they are endowed by their Creator with certain inalienable rights, and among these are life, liberty, and the pursuit of happiness, that to secure these rights governments are instituted, deriving their just powers from the consent of the governed.” Then, sir, the government, if it has any just powers, must derive those powers from whom? From men who can read and write? From men who have had the benefits of education? From those who are governed, whoever they are, whether those men be born on these shores or upon foreign shores; whether those men have one complexion or another complexion; whether those men be Protestant or Catholic; whether they be Jew or Gentile, if they be governed, the government, to be just, must derive its powers from the consent of the governed. These, sir, were the doctrines in which I was educated. We call these republican. I believe if the republican party has any doctrine to-day, that is the doctrine of the republican party; and I say, sir, that republicans cannot afford to swerve from the ground that governments only derive their just powers from the consent of the governed. It was the universal doctrine of the people of the United States until 1834. In 1834 great and agitating questions arose. The slavery question then got a hold upon the feelings of a portion of the people of this country, and that agitation has now prevailed for 33 years, and during that agitation we have almost forgotten that it was a conceded fact that

white men had rights. The struggle that the people has been engaged in was to see whether black men had rights; and the great Republican party in which I was educated, the great Republican party that drew its life blood from Thomas Jefferson, the author of that sentiment I have read here to-day, has found itself in the latter days of these thirty-three years with its champion standing in this hall, and its champion standing in yonder hall laying down the doctrine, in so many words, that men have no natural right to participate in the administration of the government under which they live. And, why? It was the necessity of the position. God had made of one blood all the nations of the earth. Their consciences told them that the black man was of common origin and of common destiny with themselves. It was necessary to disfranchise the black man, and how could it be done? By disfranchising the white and black together. Sir, I believe in no such doctrine, I believe, sir, that doctrine (pointing to a volume containing the Declaration of Independence), and I believe in the doctrine laid down in another book a little more sacred, to which we all on this floor yield credence; and from these two sentiments, first, that governments derive their just powers from the consent of the governed, and from that other sentiment, “whatsoever ye would that men should do unto you, do ye even so to them,” you may establish a government that shall be worthy of men; you may establish a government that shall become the race; you may establish a government that shall be honorable to the race itself, and to the Creator of that race that presides above it, and upon no other principle. And it is because of the violation of this principle that I am opposed to disfranchising any man, and denying him the right to give his consent to the powers of the government under which he lives, even if that man should not be able to read and write. I wish, sir, that every man in the community was educated. I wish that every man had the advantage of education in his early youth. But we have notable examples of men in the community, not only of giant intellect, but of noble patriotism and large views, who never learned to read and write until their dying days. I have in my mind the example of a man who, during the war, in his section exercised as much influence as any man almost in the country, for good. I refer to Funk, of Illinois, a man of immense wealth, a man of giant intellect, a man of as noble patriotism as any man in this country, and yet his early advantages had left him without the power of reading or writing. The men who know what was done by that man during the war for the preservation of our Union, in his nation's struggles and efforts, would put his right to vote in Illinois far higher, and the importance of his voting far higher, than they would place that of an intelligent and wicked-hearted rebel who happened to be located in the State of Illinois, and who durst not, from his position, take open ground against the government.

Mr. FRANCIS—I would like to inquire of the Chair whether a motion to lay the proposition of the gentleman from Dutchess [Mr. Carpenter] on the table would be in order at this time.

The CHAIRMAN — The Chair would inform the gentleman that no such proposition can be made while in Committee of the Whole. The question before the committee is on the proposition of the gentleman from Dutchess [Mr. Carpenter].

Mr. FULLER — I am opposed to the proposition of the gentleman from Dutchess [Mr. Carpenter], but at the same time I think that the gentleman from Rensselaer [Mr. M. I. Townsend], perhaps, has laid down the proposition upon which he proposes to base his vote a little too broadly. There are no great political axioms which can be received without some qualification. The qualification for the elective franchise, undoubtedly, as a general proposition, is manhood; and even it is necessary to take that proposition with some qualification. What they should be I do not now propose to take the time of the committee to discuss. I have not risen for the purpose of discussing any abstract theory, but simply the question whether it would be right, in the abstract, that the voter should have intelligence or none. I propose to put my vote upon this question upon a different basis. Sir, we have not been sent here to make a new Constitution. We have a Constitution already, under which we have lived for the last twenty years, and experience has proved it to be a very good Constitution. Experience has also demonstrated that in it there are some defects, and it is to amend those defects that we have been sent here, and not to recast it and make it new. I think that, in our action, we should confine ourselves to the remedying, substantially, of those defects which experience has pointed out, and, having remedied them, to go home and submit the result of our labors to the people. Now, the want of some such qualification to vote as that proposed by the gentleman from Dutchess [Mr. Carpenter] is not one of the defects which calls for amendment, and is not one of the defects which has called us together. The people do not, or at least my constituents do not, ask for any such qualification for the exercise of the elective franchise to be inserted in the Constitution. They have not sent us here for the purpose of inserting any such qualification, and for that reason I propose to vote against it. It may look very well in the abstract. Like a great many other propositions, it may sound very well in theory. A very good argument may be made on either side of the question, but the answer to it all is that the people, our constituents, do not ask for it. We are in great danger of doing too much. There is a very great deal more danger of this Convention doing too much than there is of its doing too little. There is but little work to be done. There are but few amendments wanted to be made, not more than half a dozen substantial ones, and if we confine ourselves to them we can do up our work in five or six weeks and go home, and submit it for acceptance or rejection by the people. If we undertake to introduce all these fine spun theories into the Constitution, if we spend all our time in discussing that, we shall get up some work which the people will not ratify. It is, therefore, because the people do not desire it, because they do not wish any such amendment to be made, whether it is right or wrong in the abstract, that I shall vote against

the proposition of the gentleman from Dutchess [Mr. Carpenter].

Mr. CARPENTER — With the permission of the Convention, I will withdraw my amendment.

Mr. CURTIS — I have an amendment which I offer to the first section.

Mr. HAND — Is the amendment of the gentleman from Ontario [Mr. Folger] before the committee?

The CHAIRMAN — It is.

The SECRETARY proceeded to read the amendment of Mr. Curtis, as follows:

In the first line of section 1 for "*man*" read "*person*."

In the fifth line of same section, after the word "*he*" insert "*or she*," and instead of "*his*," read "*to*."

In the seventeenth line of same section after the word "*his*" insert "*or her*."

In the eighteenth line after the word "*he*" insert "*or she*."

Mr. BARNARD — I should like to ask whether this is in order. How can we ever get to the proposition of the gentleman from Ontario [Mr. Folger] if amendments are to be offered which have no reference whatever to his amendment.

The CHAIRMAN — The Chair is of the opinion that two amendments can be submitted at the same time in Committee of the Whole, separate and distinct in their character, but that the fact that two amendments are pending precludes the offering of amendments to either.

Mr. CURTIS — I don't wish to preclude amendments to the proposition of the gentleman from Ontario [Mr. Folger]. My preference would be that the vote be first taken on his proposition.

Mr. LAPHAM — I desire to inquire whether the proposition to still further amend the amendment of the gentleman from Ontario [Mr. Folger] is in order.

The CHAIR — The Chair is of the opinion that two amendments being now pending, no further proposition in the way of amendment can be at present entertained.

Mr. CONGER — I regret very much to differ from the ruling of the Chair. I hope, without taking formal exception to the ruling that the gentleman who made the last amendment will have the goodness to withdraw it for the present, in order that further amendments germane to the amendment of the gentleman from Ontario [Mr. Folger] may be acted upon by the committee. I do not think that we are likely to proceed here with any credit or satisfaction to ourselves if this rule of proposing amendments, by way of substitution, having no relation whatever that is germane to the original proposition, be proceeded with.

Mr. CURTIS — I shall be most happy to withdraw my amendment, in order that amendments having strict relation to the amendment of the gentleman from Ontario [Mr. Folger] be substituted, with the understanding that when that is disposed of, my own amendment will be in order.

Mr. LAPHAM — I offer the following amendment to the amendment of my colleague [Mr. Folger].

The SECRETARY proceeded to read the amendment of Mr. Lapham, as follows:

Strike out the word "*thirty*" in line three, section one, and insert *ten*.

Strike out lines eight to twelve, inclusive, of the same section, except the word "*no*" in the twelfth line, and insert:

*Provided*, That persons convicted of felony or bribery, unless pardoned or otherwise restored to civil rights, and persons judicially declared to be of unsound mind or incapable of managing their affairs, shall not be entitled to vote.

Mr. VEEDER—I would inquire whether the last proposed amendment to the motion of the gentleman from Ontario [Mr. Folger] is divisible, so that we can take a vote on so much of it as proposes to amend line three before considering that part striking out the proviso of the section, and substituting another in its place.

The CHAIRMAN—The Chair is of opinion that it is divisible.

Mr. FOLGER—I ask that the Secretary may read the amendment proposed by my colleague [Mr. Lapham] again.

The SECRETARY proceeded to read the amendment.

Mr. FOLGER—I accept the amendment of the gentleman [Mr. Lapham].

Mr. BICKFORD—I now offer as an amendment to the proposition, as it now stands, the following:

The SECRETARY proceeded to read the amendment of Mr. Bickford, as follows:

Amend section 1 by substituting the following for lines 8, 9 and 10: *Provided*, That persons judicially declared to be idiots, lunatics and habitual drunkards, and as such placed or being under guardianship, and persons convicted of felony or bribery, unless pardoned or otherwise restored to civil rights, shall not be entitled to vote.

Mr. GREELEY—I beg the committee to consider well, and to remember that these propositions have been thoughtfully regarded in committee, and to look at the effect of an amendment like this. Under the amendment as it now stands, the inspectors of election are sitting in a board, and endeavoring to determine who are entitled to vote. Here comes up a raving lunatic—notoriously so. Everybody knows he is crazy. He comes and offers his vote, and the inspectors cannot refuse his vote unless he has been judicially declared to be of unsound mind. We very well know that there are lunatics everywhere in the State, in reference to whose lunacy there has never been a judicial determination. If I understand the proposition all these other classes would be entitled to vote, because they have not been officially declared as belonging to those classes. I must believe the gentleman has not considered the effect of this thing sufficiently. Now, as to pauperism, let us look at these facts. I personally participated in an election where a member of Congress was chosen directly by votes brought out of the almshouse in New York for that purpose, the intent being, as the effect was, to elect a member of Congress by the votes brought from that institution. When the subject came before Congress, Congress decided that that was not an election, and sent it back to the people, and another choice took place. And, yet, if we make this amendment we shall see that it is

perfectly appropriate and proper for men managing almshouses practically to control that matter. There are in the New York almshouse, five hundred persons who are paupers. Do not we know that the men who control that almshouse will contrive to let out such men to vote? I suppose that cannot be questioned. I know that last year the almshouse was largely depopulated to send away into the several wards, men to vote in that election, on the ground that they had not lost their residence by being in the almshouse two years. They could be sent back to the original wards, where they could vote. You know very well that the political party which has not control of the almshouse will not get any of those votes. They will be compelled, nay, they will be told "If you go out to vote except as we say you cannot come back; we will shut you out, or put you on bread and water." If that were not so, they would say, "If you do not give us roast turkey to-morrow, we will vote against you at the next election." They understand that. I beg the committee to look at the effect. If it was giving five hundred or five thousand men the right of independent voting in this State, that would be one thing. But if you give forty or fifty men, who control the almshouses of the State, the control of two or three thousand votes, I do not believe that is in accordance with the republicanism even, which has been so eloquently expounded by the gentleman from Rensselaer [Mr. M. I. Townsend]. I believe there has been great corruption in the doling out of votes from the almshouses in support of the political party which has control of them; and I trust this committee is not disposed to make any such change in this proposition reported by the Committee on the Right of Suffrage.

Mr. LAPHAM—I have considered well the subject involved in the main portion of this amendment. I believe I comprehend fully the difficulties in the way of the portions of the report of the committee which I ask to have stricken out. A word, in the first place, upon the first branch of it, which is to strike out "*thirty days*," and insert "*ten days*." Ten days' citizenship and ten days' residence in the district is prescribed as a qualification of an elector. This makes the rule uniform, and allows every person who has been long enough a resident in a district to become a registered voter—to exercise the elective franchise, for that is put at six days. There is no occasion for excluding all the other classes of persons who come into an election district between the thirty days and the last day of the registration, which is six days before the election, from the exercise of the right. It seems to me too obvious that that period is too long. If the registry were required to be made thirty days before the election, that might be then proper, as there would be the necessity of requiring residence and citizenship for the same length of time. But to the main point involved in this matter. The proposition of the committee is that idiots, lunatics and persons under guardianship shall not vote. Who are embraced within that phraseology? Who do the committee intend to shut out from the right of the elective franchise by these expressions? What test would the board of inspectors have by



which to determine who comes within the description of persons under guardianship, unless it be done in the way provided in the amendment I had the honor to offer. Then we come to the eleventh and twelfth lines, "No person who shall, at any time within thirty days next preceding, have been a public pauper, shall vote at any election." Twenty-nine days before an election, a person may have the misfortune to be an inmate of an almshouse, but on that very day he might inherit a fortune of a half a million of dollars; he walks for twenty-nine days among the wealthy men of the republic, and yet he is shut out at the polls, and excluded from exercising the elective franchise. "No person who shall, at any time within thirty days next preceding, have been a public pauper, shall have the right to vote." It does not require that he shall be a pauper at the very moment of offering his vote, but he is disqualified from the fact, that at any time within that period of thirty days, he has occupied that unfortunate position! I have no doubt but that the evil to which the learned chairman of that committee [Mr. Greeley] refers is in his locality, a great evil. I have no doubt at all, but that the control which is exercised over this unfortunate class of persons amounts to an evil as great as he estimates it, but, sir, this is not the only class of evils which is attendant upon the exercise of the elective franchise. Poverty is not a crime, and poverty should not be a disqualification. Dependency by one person upon another is not a crime and should not be a disqualification. If you are to shut out the inmates of almshouses from the exercise of the elective franchise by reason of this supposed condition of dependence upon others, then you strike, if you carry out the principle, at a much larger class of persons;—at the tenants of the country who are under personal obligations to their wealthy and influential landlords—at all the recipients of private charity, who are much more under obligations to the donors, than are the inmates of almshouses to their keepers, because they know that they are not indebted to their keepers for support and are under no personal obligations to them; so if the principles involved in this amendment were to be carried out, a very large class of persons would be shut out from the exercise of the elective franchise. I am opposed Mr. Chairman, to adopting any test whatever for the elective franchise which is based on the poverty of the citizen! It is unsound in theory and unsafe in principle and in practice; no such principle ever has been recognized, or ever can be, consistently with the theory of our government; and whenever men sit down to contemplate the relative position in which wealth and poverty places men, they should remember the warning which has been written by one of the best of poets.

"Ill fares the land to hastening ills a prey,  
When wealth accumulates and men decay;  
Princes may fall, may flourish or may fade,  
A breath can make them as a breath hath made;  
But a bold peasantry, their country's pride  
When once destroyed can never be supplied."

We must give to manhood, whatever may be its condition, sir, the exercise of this great and inhe-

rent, and, as I concede to the gentleman from Rensselaer [Mr. M. I. Townsend], inalienable and natural right—for I believe it is such! We must give to manhood the exercise of this right, except in the cases of personal disqualification, such as are mentioned in the amendment which I have proposed; conviction for crime, or an adjudication in some mode which determines the incapacity of the individual to govern himself and manage his affairs. Now Mr. Chairman, one single word upon the other branch of this proposition. The learned chairman of the committee [Mr. Greeley] says: "Suppose a raving maniac were to come to the polls, should he be allowed to vote?" I answer the question, as I am entitled to in the exercise of my birthright, by propounding another. Suppose a person comes to the polls, who is not a raving maniac, but who is challenged on the ground that he is insane and a lunatic? How are the inspectors to determine that question? Are they to sit and try the case, and hear what the witnesses may have to say, in order to determine the state of mind of the person who offers to vote? While the case of the raving maniac is an exception and rarely occurs at an election, the cases in which the question I have suggested may arise would be numerous at every election. Therefore the simple test proposed by my amendment—that those persons and only such, who have been adjudged by law to be of that description, should be excluded, is, I submit to the committee, the true test by which we should be governed in cases of this character.

Mr. BARKER—I hope that the proposed amendment will be adopted by the committee, and particularly that part of it which proposes to amend the provision, the effect of which is, as reported by the committee, to make the inspectors of election a tribunal, before which is to be tried, on election day, the question whether the elector is an idiot, or a lunatic, or a person under guardianship. It is well known in the experience of most of the members of this Convention, if not all, that this involves the most delicate question that has ever been submitted to jurors or jurists. It has elicited great debate in our superior tribunals, and there have been different opinions by many of the learned men of the land as to what constitutes an idiot or a lunatic. If a man has any reason, and has a right to hold and control his property, then he has that other and more sacred right—to vote! I think it is impracticable. It will turn the election day into an occasion for the calling of witnesses and trying this great question, when if they are, as proposed by the amendment, adjudicated to be idiots or lunatics, or persons who do not have the control of their persons or property, the record can be produced and the question disposed of by an examination of the record. Upon the second proposition, that no person shall vote who has been a public pauper within the thirty days preceding, I hope that this Convention will also exclude that from the section. It is an odious distinction against aged, infirm and unfortunate persons; and I apprehend that the learned committee, and particularly the chairman [Mr. Greeley], could hardly have comprehended how many persons will come within the contemplated proscription. In this State liberal



provisions have been made to distribute alms, and I apprehend the man is as much a public pauper who receives alms from the public treasury at his own home, in his own family, and surrounded by his own neighbors, as if he is taken to the hospital or the almshouse. He is a public pauper if he receives his support and maintenance for the time being from the public; it is a charge upon the public treasury, and his neighbors know the fact that he is a public pauper; he falls within the definition thereafter, and by legislative action, he is a public pauper, though it may be a person who has the slightest infirmity, and for the slightest period of time. I hope the committee will exclude these two propositions.

Mr. ANDREWS—Mr. Chairman, I am in favor of that portion of the amendment proposed to this committee, relating to the language of the proviso, which it is proposed to substitute in place of the language of the report of the committee. I am in favor of that language in respect to idiots, lunatics and persons under guardianship, because in my judgment it furnishes a safe and accurate means of ascertaining those persons who are disabled from voting by reason of the condition in which they may be, and I think it is better and safer that the standard should be settled by judicial determination, and not be left to the judgment or caprice of boards of inspectors, to try that question at every recurring election. I shall also vote in favor of that part of the amendment, which in substance provides for allowing paupers to vote, not that I think it would be in any fair sense a violation of the principle of representative republican government, to exclude from the right of suffrage, men who by their condition are dependent directly upon governmental aid for support, but simply for the reason that I would not incur the text of the Constitution by qualifications which have no practical importance; as in my judgment the difficulty which has been referred to by the honorable chairman of the committee [Mr. Greeley], if it exists in the city of New York, has not been noticed or felt elsewhere throughout the State. But, Mr. Chairman, I am opposed to that part of the amendment which provides for the striking out of this section the term of thirty days as a limitation in respect to citizenship and as a condition in order to entitle a citizen to vote. I am in favor of that limitation for the reasons which have been suggested by the committee. Those reasons, as I understood them, have reference to the purity of elections and the free and intelligent exercise by citizens of the right of suffrage. And, sir, although this proposition is assailed by the minority of the committee in their report submitted to the Convention, it is by no means, as I understand it, a novel proposition in this State. Because, sir, the very able and intelligent committee upon the right of suffrage in the Convention of 1846, of which the late Governor Bouck was chairman, unanimously reported to that Convention a limitation of sixty days citizenship, instead of the limitation of thirty days provided by the report of this committee, and in my judgment the simple question to be determined by this Convention, is this: Is this limitation right in itself, and will it tend to accomplish the object for which it was inserted by the

committee? It has been the tendency in our State and elsewhere throughout the country, to enlarge the electoral body and admit to it all persons who could be safely intrusted with the suffrage, notwithstanding or irrespective of the accidents of birth and fortune. This has been the history of this State on this question; and it is in accordance with the suggestion made by the gentleman from Rensselaer [Mr. M. L. Townsend] that governments derive their just powers from the consent of the governed, and that men, as such, have a right to take part in the operations and control of the government which exacts their obedience. It is true, that by the Constitution of 1777, property was the test of suffrage. By the Constitution of 1821, citizenship was made the test of suffrage, abrogating the property qualification except as to men of color, as to whom a new qualification was exacted and prescribed, resting upon special and peculiar reasons, which if they ever had any force, now have none by the changed condition of that class of people in the country. I therefore, believe in widening and extending the right of suffrage just so far and to that limit, as is consistent with the safety of the State. The minority report states in very forcible language what no one can deny, that corruption in the electors, and among officials is the leprosy of the body politic. I do not understand the force of the suggestion made in that report, in assigning the reasons for the disagreement of the minority with the majority of the committee upon this question; because if it is true as stated in that report, that in the years 1856 and 1857 several thousand persons, under the exciting elections of those years, within ten days before the occurrence of those elections, made their application and took their first step in the road of citizenship, I think the inference is quite clear that it was by reason of some unhealthy and improper stimulus applied to men, which should lead them at such a juncture, in the heat of a partisan election, to make their application and declare their intention to become citizens of the United States, although full citizenship could not be reached until two years thereafter. While, therefore, Mr. Chairman, I am in favor of a part of the proposition contained in this amendment, I am opposed to striking out the limitation of thirty days reported by the committee. I should have preferred, with Governor Bouck and his democratic associates on the committee of 1846, that that term should have been extended rather to sixty days. I am in favor of this provision, because I am opposed to the disgraceful crowding of our courts, upon the very eve of a partisan election, with applicants seeking admission to citizenship, urged on and prompted by partisans who, while endeavoring to initiate them into citizenship, at the same time seek to control and direct their votes. I am in favor of it because I am in favor of any system which shall make the obtaining of citizenship rest upon the free and intelligent choice of men who desire to be citizens. I believe that the successive steps to naturalization and citizenship should be taken by men acting upon their own judgment, and seeking citizenship simply because they desire it, understanding the dignity of an American citizen.

Every measure, therefore, which in my judgment shall tend to dignify American citizenship; every measure which shall lead men properly to esteem and appreciate the value of that boon which we allow to all men, and hereafter I hope to all races of men; any proposition which tends to this result, I am disposed to favor. Because it is undeniably true that the great and vital danger to republican institutions is the danger of corruption among electors. Let us guard, as far as we can, against this tendency, and it seems to me that this particular proposition contained in the report of the committee, is a safe, just and equitable one, and it should be adopted by this Convention.

Mr. GREELEY — I move for a division of the question as indicated by the gentleman who has just addressed the Chair, and that the vote be taken separately on the propositions, as they are clearly distinct propositions.

The CHAIRMAN — The Chair would inform the gentleman from Westchester [Mr. Greeley], that the amendment of the gentleman from Jefferson [Mr. Bickford] is not divisible, but after that shall have been passed upon, if it shall be determined in the negative, the proposition to divide the amendment of the gentleman from Ontario [Mr. Lapham], will be entertained by the Chair.

Mr. ANDREWS — Suppose it is determined in the affirmative, what is the effect then?

The CHAIRMAN — The Chair is of the opinion that it becomes then an original proposition, and will not be divisible.

Mr. GREELEY — I desire only to say one word in addition to the remarks of the gentleman who has so eloquently addressed us, in reference to this change from thirty days to ten days. All I can say is, it cannot have been very fully considered by the gentleman opposing it; because, having stricken out the four months' residence, you will, by changing this from thirty to ten days, bring about a perpetual shuffling of voters from one side of the line to the other, in order to carry a doubtful Congressional or Assembly district. You will have thousands of men moving across from this side of the street to the other, or from one boarding-house to another, in order to effect a particular purpose in a doubtful or closely contested district. It would lead to universal corruption and perversion of the elective franchise, by sending men from where they belong to where they do not belong. I know of many instances, even in New England, where men vote in the town where they actually reside, and where thousands have been hired, as it is said, to go and live in other townships where the election is doubtful, and after the election is over they quarrel with the men who hired them and go back to their own town, perhaps not having been absent three days. In this case they would have to live there but ten days. I am quite sure that could not have been intended, unless they go back to their county residence or district residence for a number of days. At present we have the thirty-day rule, and you have to swear that you have lived in that district for thirty days, or you cannot vote for any officer for whom you could not have voted in the district where you formerly resided. I do entreat the com-

mittee, at any rate, to take care that this change from thirty to ten days is not made unless you mean to have elections made a mere matter of gambling, as will be done by parties contriving to draw as many votes as possible from districts where there can be no serious contest, and plant them in districts which are supposed to be very evenly divided.

Mr. M. I. TOWNSEND — At the proper time, I shall feel it my duty to offer a proposition to meet the difficulty suggested by the author of the minority report, in reference to the effect that might be produced in 1868 by changing the length of citizenship from ten days to thirty days. I shall propose that during the year 1868, ten days' citizenship shall suffice, but after 1868 thirty days shall be the measure. I deem the change proposed by the majority of the committee to be a wholesome one, and for the reasons suggested by the gentleman from Onondaga [Mr. Andrews] who recently addressed the Chair. But I wish to say a word upon the other branch of the question, now immediately before the committee, and that is, I do not consider that it is any infringement of the rights of the citizen to exclude a public pauper from the right of participation in the election. I wish to make myself as consistent as possible upon this subject, whether there may be any real consistency or not; at least I think my views upon one branch of this subject are entirely consistent with the general views which I have expressed. A man who stands an independent citizen, earning his own living, owing allegiance to none but to his own government, exercising his independent functions in the community, that man is entitled to all the rights of the citizen. But a time comes when it becomes his choice, as well as his necessity, to live on the public taxes of the State, and to be supported as a burden to the community. He chooses to give away a portion of his rights for the purpose of obtaining a personal and private end, and when he chooses to thus surrender those rights, it is doing no wrong to him to say. "If you receive this personal benefit, you shall yield up for the time being your personal rights, or a portion of them". And what is the effect of the opposite course? The gentleman from Onondaga [Mr. Andrews] says he has only heard this complaint from the city of New York. The gentleman will find, if it be not true of the city in which he resides, that it is true of other cities in this State, that when the election comes on, the public almshouses, sustained by the taxes upon the people of that locality, are thrown open, not literally setting the paupers at large, but sending out the paupers under the direction of the men in charge of the almshouses to give one hundred, two hundred or three hundred votes in the county in which the elections are going on. I confess that for myself it seems a little inconsistent to say that a man shall forfeit every right he possesses, and shall be considered a felon, and consigned to a prison if he pays one dollar to influence the vote of an elector, and yet the power shall be put in the hands of the keeper of an almshouse to positively control the votes of one hundred, two hundred, three hundred, or five hundred men at an election. Because the control is absolute in one way, not one word may be said to the pauper who is thus sent out, but the pauper



there can be no question on the point raised in the report of the minority of the committee, and which will guarantee the right of men who have declared their intentions in good faith, to vote in 1868. But, sir, the next proposition, I think, requires some little examination. It provides that no person who shall, at any time within thirty days next preceding, have been a public pauper, shall vote at any election. Now, sir, I understand that a person who is a pauper is a public pauper. In the county of Genesee and town of Batavia, where I reside, I understand if a person applies for relief, or if any one else applies in his behalf for relief, he is a public pauper. But few of the paupers of the county of Genesee are supported in the public poor-house; therefore I say that if it is understood that every person who is a public pauper is likely to be excluded from the right of voting, we must look to it and see that we do not do them injustice. Men become paupers by reason of a want of property—by misfortune, not of their own seeking. Should we disfranchise them because they are poor and needy? It strikes me not, sir. It strikes me that we should be careful lest we exclude many worthy citizens, as worthy as any gentleman upon this floor, to enjoy the right to vote. I know men who fought in the war of 1812, who, by being neglected by the general government, have become paupers without any fault of their own. Would it be right to exclude such men from the privilege of voting? Then again, I am opposed to a property qualification, from beginning to end—from first to last. I propose to vote in favor of giving colored men the full rights of citizenship independent of property qualification. I am not therefore prepared to apply as a rule to a white man, that he must possess a property qualification to entitle him to vote; for, as I said before, a man becomes a pauper by reason of a want of property. If he had property, he would not become a public pauper. Shall we apply that test to one class of citizens, when we propose to remove it in respect to another? I think my venerable friend from Rensselaer [Mr. M. I. Townsend], when he comes to look at the subject in that light, will say that the position cannot be defended upon principle at all. For one, I am disposed to base the right to vote upon manhood, without reference to color, and I would submit to the gentleman from Westchester [Mr. Greeley], whether or not the principle of excluding paupers can be defended consistently with the remainder of his report.

Mr. GREELEY—I would ask the gentleman from Genesee [Mr. Wakeman], whether this report proposes to apply any rule to white men that it does not apply to colored men.

Mr. WAKEMAN—None whatever, but taking the report altogether, it does propose this. It proposes to give every male citizen the right to vote, excluding afterward, paupers, and paupers are made so for the want of a property qualification. Under our present Constitution, the evil may be remedied in this way. I can see there is a difficulty, and perhaps one that cannot properly be remedied by the Constitution, and that is the case of men who are under the

control of a public officer in the almshouse. We might insert some provision by which he should not have control of a pauper, or in other words, that a keeper of the almshouse shall not control the votes of men who are inmates of the almshouse. There would be some propriety in this. But to apply the rule to every public pauper, would exclude a large class of persons who are absolutely dependent for some little aid, but who are worthy citizens of the State. Therefore, to be consistent in voting on this question, as well as on the question in reference to colored voters, I must vote for the amendment of the gentleman from Ontario [Mr. Lapham], doing away with all property qualifications, for the white as well as for the colored man, and put each on his manhood—upon his absolute, inalienable right, as has been stated by the gentleman from Rensselaer [Mr. M. I. Townsend]. He has either the right to vote or he has not. It is provided here by the draft reported by the committee, that persons shall be excluded who have committed crime, and for such we have a right to disfranchise them. A man who is convicted of a felony, or who receives a bribe or does any other act by which we have a right to say he shall be disfranchised, should be. But, sir, if by misfortune or poverty, persons are compelled to receive public alms, it does seem to me that we cannot consistently vote for their disfranchisement, and especially when we have voted to remove the property qualification in the case of colored citizens. Therefore, I trust that the amendment of the gentleman from Ontario [Mr. Lapham] will be adopted.

Mr. HAND—This question has been pretty fully discussed, and I do not propose to go over the whole ground of discussion, but I do feel called upon to review some of the sentiments that have been brought forward here—very absurd sentiments, which may be used in the discussion of other subjects. I was very glad that the gentleman from Rensselaer [Mr. M. I. Townsend], whom I highly respect, answered his own argument, and rendered the position that he previously took, absurd to the view of the whole Convention. He told us that manhood suffrage was an inalienable right, and afterward he stated that poverty should exclude a large class of our citizens. Sir, there is no such thing as an inalienable right. There is no such thing as a manhood right of any kind or name whatever, but that man may be called upon to yield in society. Our right to life is limited, and so is our right to the pursuit of happiness. We meet with legal restrictions at every step. Every law in the statute book is a restraint. It forbids or enjoins something. In so far as it does, it is a restraint upon my freedom of action. If manhood suffrage were right, we should need no Constitutional clause for it, but every person would walk up to the polls, and demand the right to deposit a ballot. We have four millions of people in this State, but what number of persons have we under this proposed Constitution, who will deposit their ballots. Less than one-sixth of our population. By what right do you exclude five out of six? Is it not because you have a right to prescribe the right of suffrage, and tell what its conditions shall be? You say a man



shall be 21 years of age before he shall be allowed to vote. If you have the power why not exercise it and say he shall be forty years of age? Who gives you the right to say that the age of twenty-one years is the precise period of a man's life when he shall attain the privilege of the elective franchise? The fact shows that the right belongs to society, in its organized capacity, coming together here in this Constitutional Convention. The whole subject is open to their action, and is to be decided by their discretion. And now, a word as to the subject of pauper suffrage. I am sorry that the committee saw fit to introduce this into their report. We have been told here that if men choose to accept public charity, they should thereby lose their right to citizenship. I would ask if they do it as a matter of choice? If stern necessity and misfortune, to which we are all liable, and from which none may be exempt, do not force men to accept of public charity? I would ask if men of tried worth, with high aspirations of patriotism and love of country, have not received aid from the public purse? And let me ask you, as an offset to the case cited by the gentleman from Rensselaer [Mr. M. I. Townsend], of the man in Illinois who could neither write nor read, but who performed such wonderful things for his country, if there are not thousands of as good patriots as he, who have risked their lives on the battle-field, and who, to-day, by reason of wrongs perpetrated upon them in Southern prison-houses, and injuries received upon the battle-field when fighting in defense of their country, will not necessarily become public paupers, and receive aid from the government under which they live, being disabled in the service of their country. Would you exclude this large class of persons from the privileges of citizenship? If an evil exists in the city of New York, as the gentleman from Westchester [Mr. Greeley] has stated, by which hundreds of men are under the control of a single man, the remedy for that is the enactment of some provision by the Legislature by which that power shall be taken away from the keeper of those persons under his charge. Do not say that honest poverty shall exclude a man from the right of suffrage. Take away the power of the keeper. When a man desires the benefit of the ballots of these paupers in the several localities, let him have access to them, and let them be conveyed by such persons to those several localities, without the supervision of their keeper, guarded by proper legislation against the exercise of any such power, to the place where their ballots are to be deposited, there to exercise the right of freemen. Let us not, at this day, make such a test as this. If we exclude any person from the rights of citizenship, let it be a man who, by his own act, has unfitted himself for the performance of its duties. A beautiful state of things it would be, if drunken vagabonds, unfitted for the performance of the duties of citizens, would stagger up to the polls, and crowd out of the way some patriot who had shed his blood in the nation's defense, and who, by reason of this, had been compelled to accept, at the hands of the public, a small pittance, to enable him to eke out a subsistence. I introduced a resolution

asking the Committee on the Right of Suffrage to inquire whether habitual drunkenness, that totally unfitted a man for the ordinary business of life, should not exclude persons guilty of it from the right of the elective franchise. The committee turned a cold shoulder to the proposition.

Mr. M. I. TOWNSEND — Will the gentleman allow me to inquire if "persons under guardianship" does not mean habitual drunkards, who have conducted themselves so loosely that guardians have had to be put over them? I suppose that such were intended to be included in that description by the committee.

Mr. HEND — There are enough drunkards in this State to turn every election, who have never been put under any guardianship whatever. We have vast numbers of instances where families and wives hesitate to put this last disgrace upon one so nearly connected with them. With these remarks, as this discussion has been somewhat protracted, I will leave the subject.

Mr. BARNARD moved that the committee do now rise, report progress, and ask leave to sit again.

Which was carried.

Whereupon the committee rose, and the President resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

Mr. ENDRESS — I move that the Convention do now adjourn.

Mr. GREELEY — Can we not move to take a recess until four o'clock?

The PRESIDENT — The motion to adjourn is first in order.

The question was then put on the motion of Mr. Endress to adjourn, and it was declared carried.

So the Convention stood adjourned.

WEDNESDAY, JULY, 10, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. WM. WYATT.

The Journal of yesterday was read by the Secretary and approved.

The PRESIDENT made the following announcement:

Mr. Jarvis, of New York is appointed a member of the Committee on the Legislature, its Organization, etc.; to fill the vacancy occasioned by the voluntary retirement of Mr. J. Brooks.

Mr. VAN COTT presented the petition of citizens of Brooklyn against the appropriation of public moneys to the support of sectarian, charitable and other institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. TUCKER presented the petition of men and women of New York, for the extension of the right of suffrage to women.

Which was referred to the Committee of the Whole.

Mr. E. A. BROWN presented the petition of William King and six others, electors of Martinsburgh, Lewis county, for a constitutional provision prohibiting the Legislature of the State and Boards of Supervisors of counties and municipal corporations, donating or appropriating public money or property to churches, colleges, hospitals, etc., of a sectarian character.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GRAVES presented the petition of forty-seven males and fifty-five females from the town of Marcellus, Onondaga county, asking for a provision to be incorporated in the Constitution, which shall be separately submitted to the people, prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. GRAVES also presented the petition of fifty-four ladies and gentlemen of the city of New York, asking for equal suffrage for women.

Which was referred to the Committee of the Whole.

The PRESIDENT presented a communication from the superintendent of the Onondaga salt springs, in reply to a resolution of the Convention for information in reference to salt springs.

Which was referred to the Committee on Salt Springs, and ordered to be printed.

Mr. E. BROOKS—The Committee on Charities and Charitable Institutions to whom was referred a memorial from one hundred and twelve citizens of Waverly, Tioga county, praying for some provision in the Constitution to prevent donations of money for sectarian charities, beg leave to report this memorial back to the Convention, and ask that they be discharged from consideration of the same, and that it be referred to the Committee on the Powers and Duties of the Legislature. Let me say, that the committee make this request, solely in reference to the manifestation made by the Convention in the motions which have been made here, that another committee should take the subject under consideration, and not from any disposition to shirk the labor or responsibility incident to an examination of the subject, and to making a report upon it.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. STRONG—I some days since gave notice that I would offer an amendment to the rules for the consideration of the Convention. I would ask whether it does not come up properly at this time; if so I would like to have it taken up.

The SECRETARY proceeded to read the amendment of Mr. Strong, as follows:

**RULE 46.**—That no amendment to the Constitution shall be adopted, except upon the affirmative vote of a majority of all the delegates elected to this Convention.

Mr. STRONG—I am perfectly willing that the vote should be taken on this amendment without any remarks made by myself, except to state the reasons why I propose it. I have adopted the language from the provisions in the Constitution of 1846; my impression is that is a very strong reason for adopting the same rule here. By the provision

in that Constitution, no bill should become a law unless it received the affirmative vote of a majority of all who were elected to the Assembly and all who were elected to the Senate. There is another provision, that is, whenever there is an amendment proposed to the Constitution, that it should receive the affirmative vote of a majority of the members of both houses before it should be considered by the people; afterward, that it should be published, and at the second session should again receive the affirmative vote of the majority of all who were elected to the Assembly and the Senate before it should be submitted to the people by way of amendment to the Constitution. I think the provision is a good one, and I hope and trust it will be adopted by this Convention. I do not think it is showing a proper respect to the people to submit any amendment for their consideration until that amendment has received the affirmative vote of the majority of those the people have sent here to represent them. I do not offer this for the purpose of raising any opposition to any particular amendment which may be, or which has been offered, but as a general rule. It may be that it will apply to and defeat some amendments which I may have the honor of submitting to the Convention during its session. I do not know of any objection which can be urged to this proposition. If it shall amount to a restriction upon the action of this Convention, I believe it would be all the better for that reason. I think from the number of propositions that have been submitted here, there is an impression among many that we are going to adopt a new Constitution. That is not my idea. My idea is, that the people have sent us here to amend the old Constitution where they have found that was objectionable from the experience of twenty years, since the Constitution of 1846 was adopted. I think if we should submit all the proposed amendments to the popular voice, and I am perfectly confident that the popular voice has never declared that we should make a new Constitution.

Mr. ALVORD—I am entirely willing that the proposition of the gentleman should pass, if it be amended in the right direction; but, as it is now, it seems to me to be entirely inconsistent with the rule which he undertakes to bring up for his guidance in the matter. We are here for the purpose of forming a new Constitution; separate and distinct propositions from time to time are brought forward to make, together, when the whole is connected, a Constitution which we shall submit to the people; therefore it assimilates itself to the process of the Legislature in passing upon different sections of a bill. There it does not require a majority of all those elected to the Legislature to pass upon those sections. When we come down to our finishing work and put the enacting clause and the jurat at the end, then it requires a majority of all those elected. I have no sort of objection whatever to the resolution reading that when we shall have finally got through our work, and come to the question of an entire Constitution which we are to sign and give forth to the people, that it shall then require a majority of all the members elected to the

Convention. But I am opposed, sir, in the preliminary work of passing upon these different sections, that each and every one of the distinct propositions submitted shall require the affirmative vote of a majority of the Convention. Why, sir, it is a mere bid for men to stay away from here, because a vote, if away from here, is just exactly as good as a negative vote if here upon the floor, and it would embarrass us from the beginning to the end of our proceedings. When we shall have got through passing upon all these propositions by a majority such as shall be found in a quorum, then let us all come together and take the completed work and pass upon it, and if a majority be found in favor of it, then it shall be considered as our work, and go to the people, not otherwise. Therefore, I am opposed to this amendment in its present form.

Mr. MERRITT—I most emphatically dissent from the proposition as offered by the mover, and also the proposition as intimated by the gentleman from Onondaga [Mr. Alvord]. We are not here passing laws; our action is to be reviewed and passed upon by the people. It is expected of course, that the members of this Convention will attend its sessions; but circumstances may arise that will absolutely prevent delegates from being present, when they might even favor a proposition, which we might thus adopt by a majority of a quorum, and yet we would be prevented from submitting that to the people of the State. It is not necessary, even at this stage, to pass this resolution. I am opposed to it and if the vote is to be taken I shall ask for the ayes and noes upon it. It can accomplish nothing, in my judgment, but mischief, and as the gentleman from Onondaga very truthfully said, it is a bid for those who desire to stay away to do so, and not be put on the record in regard to propositions for amendments or separate articles to the Constitution, which may be presented. I do not say, that any delegate will be thus situated, but we can hardly tell at this stage of the proceedings what will be done before the close of the session of this Convention. It is proper that we should leave the whole subject in the hands of the majority of those who may be present. If all the members are present the rule will not be necessary, as it will require an absolute majority if the Convention is full. Whatever reasons those may have who are absent, they will not rest upon those who are present, and it is very proper that those present shall go on and complete their action on the different sections that may be passed upon, and also upon the Constitution as a whole.

Mr. SHERMAN moved that the resolution be referred to the Committee on Rules.

Which was carried.

Mr. FRANCIS offered the following resolution:

*Resolved*, That the propositions in regard to re-organizing the courts, herewith presented, be referred to the Judiciary Committee.

#### COURT OF APPEALS.

This court to consist of seven judges, holding office for fourteen years. To have appellate jurisdiction in all cases exceeding \$1,000 and in

other cases where an appeal shall be allowed by the judges.

Each judge of that court to sit at chambers at times, to allow such appeals on notice to adverse party.

#### GENERAL TERMS OF SUPREME COURT.

Five judges to be appointed, or elected by the Legislature at large, and hold office for nine years. The court to be divided into three grand districts and general terms, to be held annually in each district, by any three of the judges, to be assigned in such manner as the Legislature shall determine.

#### CIRCUITS.

State to remain in eight circuits, and two judges elected or appointed for each, to hold eight terms having general jurisdiction in law and equity.

#### COUNTY COURTS.

County courts to have concurrent jurisdiction in all cases not exceeding \$1,000, and act as referees.

Surrogate's Court to be abolished and its functions performed by the County Court.

One county judge to be appointed and hold six terms and paid a full salary, but not allowed to practice law, or receive any fees. The county court authorized to hold courts in other counties in cases as the law may provide.

In large counties an associate judge might be appointed.

#### CITY COURTS.

In large cities courts may be established by a majority vote of the Legislature.

Under the above system no judge would review another's decision, and many cases would stop at the first term for that reason.

In most cases of \$1,000, the decision of the first term will be final, but important questions go up by allowance.

A Court of Appeals could easily dispose of cases which would come before it.

A great delay and expense of references would be avoided to a great extent, by trying cases before a judicial officer without fees, which would take away all inducement to delay the trial as at present.

The subject was referred to the Committee on the Judiciary.

LIVINGSTON offered the following resolution:

*Resolved*, That no distinction shall ever be made between resident aliens and citizens in respect to the right to take by gift, grant, devise, or otherwise, and to grant, devise or otherwise dispose of real estate, and that all laws making any such distinction shall be repealed.

The subject was referred to the Committee on Powers and Duties of the Legislature.

BECKWITH offered the following resolution:

*Resolved*, That the Auditor of the Canal Department, and he is hereby requested to furnish to the Convention a copy or copies of contracts made for force for repairs and improvements of the main canal—and also any and all assignments of such contracts, or any of them, by the

contractors, and any and all powers of attorney given by such contractors, or any of them, to other persons, to perform on their part, such contracts, or any of them.

Which was laid over under the rule.

Mr. BECKWITH also offered the following resolution:

*Resolved*, That the Senate Committee on the Investigation of Canals, be and they are hereby requested to furnish to this Convention, the evidence, so far as the same has been taken by them, and especially the evidence in respect to the Champlain canal.

Which was laid over under the rule.

Mr. BARTO offered the following resolution:

*Resolved*, That the Superintendent of Public Instruction be requested to prepare, as soon as possible, and communicate to this Convention a tabular statement showing:

1. The whole number of children in each county in the State entitled to attend common schools each year since 1840.

2. The number of children attending such schools in the several counties each year since 1840, and the number not attending.

3. The amount of taxation imposed upon the people in the several counties of the State, for school purposes, in each year since 1840, State, county, town and municipal tax, each stated separately, and the percentage each, of State, county, town, and municipal tax upon the amount of taxable property.

4. The ratio of taxation to the whole number of children entitled to attend common schools in each year since 1840.

5. The ratio of taxation to the number actually in attendance in each year since 1840.

6. The ratio of increase or decrease in the attendance upon schools in each county, as taxation has been increased.

7. The number of such schools which have become free, and the year in which they became free.

8. The ratio of increase or decrease in attendance upon such schools in municipal corporations as have been made free, to the whole number of children entitled to attend such schools.

And further, that the Superintendent be requested to report to the Convention how soon he can probably make the above statement.

Which was laid over under the Rule.

Mr. CHURCH offered the following resolution:

*Resolved*, That the Comptroller and the Auditor of the Canal Department be requested to report to this Convention a statement of all sums advanced or paid for canal purposes, or on the canal debt, from other sources than canal revenues, and all sums advanced or paid from the canal revenues for other than canal purposes, or on canal debt (specifying such purposes), in each year, from 1817 to the present time, and also the interest upon each item, from the time it was paid or advanced to the present time, stating the items of interest separately from the items of principal.

Which was laid over under the rule.

Mr. M. H. LAWRENCE offered the following resolution:

*Resolved*, That the Committee on Finance be requested to inquire into and report to this Con-

vention what offices, if any, have become unnecessary, and may be abolished without detriment to the public service; and, especially, whether the duties devolving on the State Assessors, Canal Appraisers, Loan Commissioners, might not safely be transferred to other appropriate officials, thus simplifying and improving the financial condition of the State.

Which was referred to the Committee on the Finances of the State.

Mr. BICKFORD offered the following resolution:

*Resolved*, That hereafter, until otherwise ordered, the daily session of this Convention shall begin at ten o'clock in the forenoon.

Mr. E. BROOKS—I hope that resolution will not be adopted. Most of the committees of this body are engaged an hour or two in the morning.

The resolution giving rise to debate, was laid over.

Mr. GROSS called up the resolution offered by him on the 27th of June.

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, At the last annual session of the general court of Massachusetts, before a joint committee, the question of *license* and *prohibition* has undergone a thorough examination, and the advocates on either side have endeavored to place the most ample material on the subject before the Legislature of their State; therefore,

*Resolved*, That the Secretary of the Convention be instructed to apply to the State Librarian or to the Clerk of the General Court of Massachusetts for several copies of the printed debates on the the above named subjects for the use of the Committee on the Powers and Duties of the Legislature, except as to matters otherwise referred, the Committee on Cities, their organization, government and powers, and the special Committee on Adulterated Liquors, etc.

Mr. GROSS—My object in offering this resolution was to place before these committees of this body all the testimony possible in regard to this much perverted question of license and prohibition, and such as has never before been made accessible to any legislative body, or Convention charged with the revision of the organic law of the State. In my opinion, any one of unprejudiced mind, on reading this testimony, coming as it does from the highest authorities on matters of State, and church, and science and society, must be satisfied that prohibitory legislation cannot be and should not be the object sought for by any honest and judicious temperance man and promoter of public morals. I send a copy of the report in question to the desk of the Secretary, and I ask for the adoption of the resolution.

Mr. GREKLEY—I wish to know whether it is testimony the resolution proposes to furnish or debates. I don't think we need any debates.

Mr. GROSS—Testimony.

The PRESIDENT—The Chair would inform the gentleman that the resolution calls for the printed debates on this question.

The question was then put on the resolution and it was declared to be adopted.

Mr. AXTELL offered the following preamble and resolution;



**WHEREAS**, The evils of intemperance are widespread and increasing in this State; and

**WHEREAS**, a vast proportion of the crime and pauperism, with the taxation resulting therefrom, are the direct result of intemperance; and

**WHEREAS**, Intemperance is stimulated and increased by the open sale of alcoholic beverages, and diminished where the sale of these beverages is by law prohibited; and

**WHEREAS**, The right to *regulate* the sale of alcoholic beverages is unquestioned in all civilized communities, involving, as it does, the right of *prohibition*, therefore,

*Resolved*, That it be referred to the select Committee on Prohibition, to consider the expediency of placing in the Constitution the following provision:

The Legislature *may* provide by law for the prohibition of the sale of alcoholic beverages.

Which was referred to the Committee on Adulterated Liquors, etc.

Mr. E. BROOKS offered the following resolution:

*Resolved*, That the Committee on Cities take into consideration the propriety of so amending the Constitution as to require municipal corporations to sell all public property not absolutely necessary for the government and accommodation of those holding office in such cities.

Which was referred to the Committee on Cities, etc.

Mr. FULLER offered the following resolution:

*Resolved*, That it be referred to the Committee on the Judiciary to inquire into the propriety of inserting a provision in the Constitution, substantially as follows:

Courts of special sessions in the several counties of this State shall have exclusive jurisdiction to hear, try and determine all cases of assault and battery not charged to have been committed riotously, or upon any public officer; all cases of petit larceny not charged as a second offense, and all cases of intoxication; provided, however, that the accused in such cases shall have the right to demand a trial by jury in such courts.

Which was referred to the Committee on the Judiciary.

Mr. STRATTON — I ask to have taken from the table a resolution asking for certain information from the comptroller of the city of New York, and I move for its adoption.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the comptroller of the city of New York be requested to prepare and communicate to this Convention, as early as practicable, the amount paid for the year 1866, for salaries of justices, judges, clerks, stenographers, officers, inspectors and attendants, and the amounts paid for stationery and contingent expenses of the following named courts in the city of New York, stating the number of justices, judges, clerks and other attendants of each court separately, and all other expenses of each court separately, as far as he is able to do so, and also whether said amounts are to be increased or diminished the present year, and how much, viz.: supreme court, superior court, court of common pleas, marine court.

The question was then put on the resolution and it was declared adopted.

Mr. GRAVES — I offer the resolution to be found on page 45 of the Journal, which was submitted to the Committee on the Right of Suffrage, and which has not been reported upon. On consultation with some persons who are opposed to the principles involved in the resolution—

The CHAIRMAN — The Chair does not understand the motion of the gentleman from Herkimer [Mr. Graves].

Mr. GRAVES — I will state it in a moment. Some of the persons who are opposed to the principles contained in the resolution, as well as those who are favorable to them, have said that some time should be designated in the resolution when the Convention should be held, allowing the women to determine whether they would exercise this privilege, to afford them a proper time for discussion, so as to enable them to say advisedly whether it is proper for them to exercise the elective franchise or not. I have now incorporated in the resolution the time, fixing the date for June, 1868.

The SECRETARY preceeded to read the resolution, as follows:

*Resolved*, That a committee of five be appointed by the Chair to report to this Convention, at as early a day as practical, whether, in their opinion, a provision should be incorporated in the Constitution authorizing the women in this State to exercise the elective franchise, when they shall ask that right by a majority of all the votes given by citizen females over the age of twenty-one years, at an election called for that purpose, in June, 1868, at which the women alone shall have the right to vote.

Mr. C. C. DWIGHT—I move the reference of this resolution to the Committee of the Whole, having in charge the question of female suffrage.

The question was then put on the motion of Mr. C. C. Dwight, and it was declared carried.

Mr. S. TOWNSEND—I offer the following resolution:

*Resolved*, That section nine of article four, of the existing Constitution, be amended by inserting the word "elected" in place of the word "present," in the seventh line thereof, relating to the veto power.

The CHAIRMAN — What reference does the gentleman [Mr. S. Townsend] ask for the resolution.

Mr. S. TOWNSEND — I suppose to the Committee on the Powers and Duties of the Legislature. I beg leave to say a word or two in connection with offering the amendment. Among the very few oversights and omissions, if there is more than this, in the Constitution of 1846, which has been pronounced by my friend from Rensselaer [Mr. M. I. Townsend] almost immaculate, was this, that while they prescribed that no statute should be enacted without the vote of sixty-five members of the Assembly, and seventeen members of the Senate, yet that Convention left the veto power in such a position that in any instance a vote of forty-four in the Assembly and fourteen in the Senate, might overcome the opposition of the Governor. Such an absurdity must only have occurred through oversight, and it is:

**Mr. KERNAN** — No, I did not. It was simply a motion to amend in the respect named.

**Mr. GREELEY** — The gentleman [Mr. Kernan] has stated that no practical evil has been experienced at the polls. Where I voted last fall, a person who was a resident of the county, only by virtue of being placed by the court in charge of a committee or guardian, appeared at the polls and offered his vote. His vote was challenged, but he swore it in under the direction and guidance of the people who had charge of him, by order of the court, and we could not help it.

**Mr. KERNAN** — For what reason had he been placed under the charge of a committee?

**Mr. GREELEY** — For incompetency of mind.

**Mr. KERNAN** — What was the specific cause?

**Mr. GREELEY** — I do not know what was the cause. I stated simply the fact, that at our poll in the town of New Castle, in Westchester county, last fall, appeared a person who was utterly unknown to us, and whom we found to be a New York man, who had been brought from New York to our town under the charge of a committee or guardian, who had brought him into the county of Westchester and boarded him with his father; and that father and his son brought this person up to the polls, and he swore in his vote in spite of us and all we could do. He was only in the county by virtue of having been placed in charge of a committee. Now the gentleman says there is no need of this clause—that these officers—the inspectors of election—are not the proper persons to determine who are or who are not lunatics. How then is the case to be determined? Here comes up an undoubted idiot. We know him to be such. How is he to be excluded? Or suppose him to be insane, and known to be such. How is he to be excluded? He comes up and, if he is not excluded, he votes. Those who have control of the idiot or lunatic, may put him on the register, and make him vote in spite of you. What is wanted is a rational decision by the people of this State. I do not believe that the right of suffrage belongs to persons of any class, whose vote will not contribute to the intelligence and capacity which go to make up the popular verdict. It is no benefit to these poor creatures, to make them voters. It is a cause of discord and contention at the polls, for in times of high party excitement, persons who we know ought not to vote, will be brought up, and if they have not the proper mental capacity to vote, they will be crowded through. Men will say, as they have done. "They, on the other side, will get all the votes they can, and we must do the same." I trust, therefore, that this Convention, if they mean that idiots shall not vote, will say so. It certainly is very dangerous to leave to inspectors of election, the power to exclude idiots from voting, when the Constitution does not provide that they shall be excluded. If you mean that idiots and insane persons shall not vote, let the Constitution of the State say so. I wish to say a word in regard to striking out the word "pauper." The article as presented, requires simply that a man who is to vote shall not be the recipient of public alms during the thirty days preceding election. Those thirty days occur in the bright month of October, when the

earth is teeming with plenty, and at a time when, if a man has ever earned anything, he has earned it during the preceding summer; and we say that if he wants to vote he must keep clear of the reception of public alms during those thirty days. I do think that this is an exceedingly mild proposition. It is, in effect, a proposition to deprive some fifty or sixty managers of poor-houses, and dispensers of public alms, of the privilege of casting eight or ten thousand votes in this State. That is just what it amounts to. If these recipients of public charity receive aid from public officers, will they not be under the control of those officers, men who give them perhaps two dollars, or three dollars, or whatever amount they think best. Do you suppose they will vote against the wishes of a man who holds the purse strings, who decides how they shall live, whether they shall live well or ill? I do hope that so much of the report of the committee as recommends that a man shall not be allowed to vote who has received alms within thirty days, will be left to stand.

**Mr. DALY**—If the fact be so, as the gentleman from Westchester [Mr. Greeley] states, that he knew of an individual case in which a person was improperly allowed to vote, that is no reason in itself why we should make an important change in the fundamental law; and even if it were a fact that it has been the custom in the city of New York for all the inmates in the public almshouse to vote at the suggestion and according to the will of those who are intrusted with the management of that establishment, that particular instance of local abuse would be no reason in itself for a change in the fundamental law, by which all persons who are in the unfortunate situation of being supported at the public expense, shall be deprived of the privilege of the elective franchise. The gentleman from Westchester [Mr. Greeley], has stated as a reason for this change, and as evidence of the fact which he states, that at a certain Congressional election in the city of New York, all the inmates of the public almshouse were taken to the polls by the superintendent or managers of that institution, and that they voted for a particular candidate. That event occurred twenty-four years ago.

**Mr. GREELEY** — It was in 1846.

**Mr. DALY**—I make the assertion, after due consideration, that the event occurred in 1842. I am a native and resident of the city of New York, and take cognizance of facts that occur there, as all persons with the same means of intelligence; and I add to it the statement that from that time to the present, I have never heard nor read, nor has the gentleman from Westchester [Mr. Greeley] stated a single instance in which that abuse has been followed or has occurred again. I think it most unlikely it should occur, from a fact which I will state. The management of the public charities of the city of New York is intrusted to a body consisting of four gentlemen who are equally divided, and have been from the organization of the board, between the two great political parties of the State. And the gentleman from Westchester [Mr. Greeley] will not dispute that the gentlemen who have filled this important trust have uniformly been men of

Lunatics may have a committee appointed for their person and estate. Unless the jury go further than that persons are merely of unsound mind, and find that they are also incapable of managing their own affairs, no committee can be appointed; so that the amendment of the gentleman from Ontario [Mr. Lapham], which refers to persons judicially declared to be of unsound mind, or incapable of managing their own affairs, I am fearful will not reach the class of persons known as idiots and lunatics. For these reasons I offer the amendment.

The CHAIRMAN announced the question to be on the amendment of Mr. Krum to the amendment of Mr. Lapham.

Mr. LAPHAM—Mr. Chairman, the term "unsound mind" embraces every description of mental infirmity. It is a broader term and more comprehensive than any other which could be employed, and includes every description of persons who may become the subject of an inquisition, with the view of inquiring into the state of their minds, to ascertain whether they are capable of attending their affairs, and is in my judgment a better term than that contained in the amendment of the gentleman from Scholario [Mr. Krum]. The amendment excludes certain cases which are contained in my proposition and which are equally, it seems to me, while under the disability, improper persons to exercise the elective franchise. I assent to the suggestion of the gentleman to this extent: my amendment ought to have provided that this deprivation of the right to exercise the elective franchise should apply only while the persons are under the disability. I concur in the propriety of the amendment suggested, and am willing to have a modification of the original proposition to that extent, for that was my design.

Mr. KRUM—I know, sir, that the term "unsound mind" is very comprehensive, but I hardly think that the gentleman will say that it is more comprehensive than the words "idiots and lunatics," added to the term "and persons of unsound mind." My proposition not only includes persons of unsound mind, but also idiots and lunatics, by name.

The question was then put on the amendment of Mr. Krum, and it was declared lost.

Mr. KERNAN—I offer the following amendment to the amendment.

The SECRETARY proceeded to read the amendment, as follows:

Strike out lines eight and nine to and including the word "bribery" and in lieu thereof insert "provided that persons convicted of felony or bribery."

Mr. KERNAN—The section as amended will then read: "Provided that persons convicted of felony or bribery, unless pardoned or otherwise restored to civil rights, shall not be entitled to vote." My object is to substitute this so that if the original section and the amendment of the gentleman from Ontario [Mr. Lapham], be adopted there will be nothing in the Constitution excluding idiots, lunatics, or persons under the control of a committee, from voting. Now, sir, while probably no one will argue that it is fit or proper, that idiots or lunatics should vote,

yet there is a good deal of difficulty, practically, where the question as to the capacity of the party to be established by judicial record or otherwise, being decided by a board of inspectors of election, I do not think that in the previous history of the State, there has been any difficulty felt by the people in reference to this class of persons voting. None of our Constitutions, I believe, have prohibited them from voting, nor have I ever learned that there was ever any complaint that this class of persons have voted. I suppose no one would be in favor of allowing the inspectors of election to decide who is an idiot, or who is a lunatic. There is a great difference of opinion on that subject, you will find, among men. If, as I understand the amendment, they are to be excluded when they have been judicially decreed to be idiots or lunatics, that would happen to very few of the idiots or lunatics in the State. It is quite rare that the case of a person who is an idiot or lunatic, confessedly so, is brought before a court, and the fact judicially established. The proposed amendment, therefore, will reach but few of the class of persons generally conceded to be of those named, and there would be difficulty and trouble, and questions arising as to the competency of the proof, when it is attempted to establish that the party has been thus adjudicated. And, therefore, I have thought that we would be wise in allowing the Constitution to be in reference to this class of persons, precisely what it has been hitherto. I think no man confessedly an idiot or lunatic will be likely to come himself to vote, and the man or partisan who should endeavor to have him vote, I think we may leave him to be shamed down by men of all parties, at that election. As I understand the amendment of the gentleman from Ontario [Mr. Lapham], it excludes persons over whom the court have appointed a committee, on account of their intemperate habits. I am opposed to that. If all men, intemperate or temperate, over whom any committee has been appointed, are allowed to vote, I don't think it wise in the few cases where the courts have taken charge of a man's person and estate, by a committee, and where the law and the order of the court are stringent that he should be kept sober, to say that that man should be excluded from voting, although sober, when all others, whether intoxicated or not, are allowed to vote. It is rare that a committee is appointed over an intemperate person, except when he has an estate to squander, and then there is generally care taken of his estate, and there are provisions of the law, that he shall be prevented from indulging in the habit detrimental to him. For these reasons, it seems to me, that the original provision in the proposed clause, is unnecessary and unwise, and that instead of adopting the amendment of the gentleman from Ontario [Mr. Lapham], it would seem wiser for us simply to strike out all that part of the report, and confine its exclusion to persons convicted of felony or of bribery.

The CHAIRMAN—Does the gentleman from Oneida [Mr. Kernan] also include in his amendment the clause referring to the duration of time?



**Mr. KERNAN** — No, I did not. It was simply a motion to amend in the respect named.

**Mr. GREELEY** — The gentleman [Mr. Kernan] has stated that no practical evil has been experienced at the polls. Where I voted last fall, a person who was a resident of the county, only by virtue of being placed by the court in charge of a committee or guardian, appeared at the polls and offered his vote. His vote was challenged, but he swore it in under the direction and guidance of the people who had charge of him, by order of the court, and we could not help it.

**Mr. KERNAN** — For what reason had he been placed under the charge of a committee?

**Mr. GREELEY** — For incompetency of mind.

**Mr. KERNAN** — What was the specific cause?

**Mr. GREELEY** — I do not know what was the cause. I stated simply the fact, that at our poll in the town of New Castle, in Westchester county, last fall, appeared a person who was utterly unknown to us, and whom we found to be a New York man, who had been brought from New York to our town under the charge of a committee or guardian, who had brought him into the county of Westchester and boarded him with his father; and that father and his son brought this person up to the polls, and he swore in his vote in spite of us and all we could do. He was only in the county by virtue of having been placed in charge of a committee. Now the gentleman says there is no need of this clause—that these officers—the inspectors of election—are not the proper persons to determine who are or who are not lunatics. How then is the case to be determined? Here comes up an undoubted idiot. We know him to be such. How is he to be excluded? Or suppose him to be insane, and known to be such. How is he to be excluded? He comes up and, if he is not excluded, he votes. Those who have control of the idiot or lunatic, may put him on the register, and make him vote in spite of you. What is wanted is a rational decision by the people of this State. I do not believe that the right of suffrage belongs to persons of any class, whose vote will not contribute to the intelligence and capacity which go to make up the popular verdict. It is no benefit to these poor creatures, to make them voters. It is a cause of discord and contention at the polls, for in times of high party excitement, persons who we know ought not to vote, will be brought up, and if they have not the proper mental capacity to vote, they will be crowded through. Men will say, as they have done. "They, on the other side, will get all the votes they can, and we must do the same." I trust, therefore, that this Convention, if they mean that idiots shall not vote, will say so. It certainly is very dangerous to leave to inspectors of election, the power to exclude idiots from voting, when the Constitution does not provide that they shall be excluded. If you mean that idiots and insane persons shall not vote, let the Constitution of the State say so. I wish to say a word in regard to striking out the word "pauper." The article as presented, requires simply that a man who is to vote shall not be the recipient of public alms during the thirty days preceding election. Those thirty days occur in the bright month of October, when the

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high character and unsullied reputation. I therefore suppose it to be very improbable, with the entire control which they have over that institution in the city of New York, that they would ever permit an abuse of that character. I will say in addition, having had some experience in the inspection of such institutions, both in this country and in Europe, that in my judgment, there is no institution of a similar nature, managed with more ability, with greater humanity or with more economy, in respect to its particular administration than that institution. And I will add the further suggestion, that having had many occasions to visit it for purposes connected with benevolence, I can bear my testimony to the fact that the unfortunate persons who are the recipients of the public bounty may, in point of intelligence, be classed generally with their fellow citizens. They are generally persons who are advanced in age, and many of whom are suffering from incurable physical infirmities; but so far as my experience extends, the general grade of their intelligence and their ability to exercise this important political privilege, is quite equal to that of a large portion of their fellow citizens. I have only one additional remark to make, and that is in support of the amendment proposed by the gentleman from Ontario [Mr. Lapham]. I speak of it entirely with reference to its effect in the city of New York. How it may affect other portions of the State, I am unable to judge. It is in that poetical period of the year which the gentleman from Westchester [Mr. Greeley] refers to, (and during which he requires that the public paupers should discharge themselves from the public institutions, and support themselves at their own expense, as a prerequisite to the exercise of the privilege of voting), in the latter part of the month of October, that nearly all persons who exercise the elective franchise as the result of naturalization, take out their final papers; and it is at that same period that the great bulk of those who design becoming citizens declare their intentions. The fact that an election is approaching attracts the attention of all persons who desire to avail themselves of that privilege. And the singular fact occurs, of which I have knowledge, from an intimate acquaintance with the operations of the courts, that the number of persons who declare their intentions, and who take out their final papers, at that same period of the year which the gentleman alludes to, are about equal. I have, perhaps, discharged the official duty of naturalizing citizens, during a long continuance on the bench, to as great an extent as any other person, and therefore when I make this statement, I do it upon knowledge. The practical effect of the clause proposed by the gentleman from Westchester [Mr. Greeley] to be incorporated into the Constitution (and which would be obviated, in my judgment, by the amendment offered by the gentleman from Ontario) [Mr. Lapham], would be to cut off all persons who have declared their intention in a particular year, at any time within thirty days previous to an election, from the privilege of voting in that year in which they would otherwise be entitled to vote by their naturalization. The courts in the city of New York inter-

pret the Constitution in a liberal spirit. They refuse to naturalize within ten days previous to an election, although there is no positive prohibition in the Constitution. But inasmuch as it prohibits a person from voting who has not been a citizen ten days, the court of which I am a member, and so far as I know, the other courts, have never naturalized within that period. And as naturalization is suspended ten days before the date of an election, the greater portion of the naturalization takes place during the twenty days preceding that suspension. The practical effect, therefore, of the adoption of the clause, reported by the committee, would be to preclude from voting, those persons whose five years expire within thirty days preceding the election. For that reason, and because of the injustice of depriving so large a class of the exercise of this privilege, who are, according to the laws of the United States and the laws of the State, otherwise qualified to exercise the privilege of a citizen in voting, I object to the extension of the period beyond the ten days. At the same time, Mr. Chairman, I bear evidence to the wisdom of the provision of the Constitution of 1846, which requires some such period as ten days to elapse prior to an election, during which parties coming into the court for the purpose of being naturalized shall not be entitled to vote. It was a most unseemly spectacle in our elections formerly, in the city of New York, when persons who were qualified as voters only on the day of the election, or immediately preceding it, intermingled with the elections. It led to very great abuses, and therefore the courts of New York, carrying out the spirit of the Constitution, have refused even to naturalize, as I have suggested, within ten days preceding the time of an election.

Mr. GERRY — I would like to ask the gentleman from Westchester [Mr. Greeley], whether the practical effect of the adoption of the clause reported by the committee would not be to disfranchise unfortunate men who have received wounds in the service of their country, and have thus become disabled, and been compelled by reason of accidental poverty to resort for a temporary period to the almshouse?

Mr. BARNARD — We have here three subjects for our consideration. One is, as has been suggested by the gentleman from New York, [Mr. Daly] whether we shall cut off in the city of New York, from the privilege of voting, some ten or fifteen thousand individuals, who have within the last few years declared their intentions, within a month before the election, to become citizens, and I may say, in reference to the county of Kings, whether you will cut off from the voters of that county about five thousand who have been similarly situated. Now, sir, you will bear in mind, or if not those who live in those counties well know, that immediately preceding the election, within the last twenty days in which persons can be naturalized, the courts are more accommodating than at other times; they give up their other civil business; instead of sitting from 10 o'clock until 3 o'clock, and instead of the county clerk's office being open from 9 o'clock until 4 o'clock, for about a month before the time that naturalization closes, the courts will be in session from 9 o'clock in the morning

till 10 o'clock at night, and the county clerk's office will be open for as long a time. Hence, it is, that those persons who are compelled to earn their living by their daily toil, and cannot be spared for one day to go up to the county clerk's office, as they must go between the hours of nine and four, are unable, without losing a day, to go up to the clerk's office to declare their intentions before nine o'clock at night, during the period I have mentioned. Now, that class of persons are to be cut off by this amendment, and it has been suggested by the chairman of the committee that unless you allow this article to remain, persons may go from one county to another within ten days and have the right to vote. Who has asked of this Convention to change the Constitution in reference to county residence? Has there been a single petition presented here for any such purpose? Why is it then, that this subject of county residence is not insisted upon? Why is it unreasonable that a man should be a resident of the county three or four months before he votes? I submit, the committee has given no good reason in their report for the change, and, if you will look at the spirit of their report and look at the articles which they have proposed, you will see that they are making a very wide distinction among the different classes of our voters. They have reported all in favor of the rich, and seek by every means to cut the poor off from the privilege of voting. They say one reason is that gentlemen in the city of New York wish to reside in the country during the summer months, and possibly they may be so conscientious by reason of their residing there that when they return in the fall they may not go forward to vote. I would say, Mr. Chairman, that in my experience of some thirty years on the subject of voting in our large cities, I have found very few of those conscientious individuals.

Mr. GREELEY—I ask the Chair to request the gentleman [Mr. Barnard], when he professes to controvert the position of the report, to quote the report. His statements are not in accordance with the report itself.

The CHAIRMAN—The Chair will inform the gentleman [Mr. Greeley], that the only way he can address the Chair when another gentleman is on the floor, is to request the gentleman who is addressing the Chair to give way for that purpose.

Mr. BARNARD—If I have misunderstood the report, I will try to correct myself. I think it states here in this report, on page 4:

"At present, a resident in any county for four months is allowed to vote at the poll of any district wherein he actually resides on the day of election, though he may be a total stranger in that district. We ask you to abolish the present requirement of four months' residence in a county as a pre-requisite to voting. This exaction bears hardly on such residents of cities as spend their summer mainly in the country, and cannot afford to maintain a double residence."

Then at the close of the report, in some other part, it speaks of those who are kept away under such circumstance that they cannot vote on account of their conscientious scruples. Now, sir, these rich persons because they are the rich—

Mr. FOLGER—I would ask the gentleman to continue his reading. He has left out the important part.

Mr. BARNARD—I am coming to that part directly. I did not forget it. It is because of that class that are referred to afterward that I intend to pursue the course I am pursuing to-day. These persons that go into the country, and have country residences, I have never known to be so conscientious as has been suggested. As they have an intention to return to the city at the end of their summer vacation, they always claim the right to vote. I have found very few that had these conscientious scruples that are referred to in this report. Now, it is said here afterward that thousands of intelligent and patriotic young mechanics, employed as carpenters, bricklayers, painters, plumbers, gas-fitters, etc., go into the country to work in the summer time. That is very true, and when they come back to vote, they vote because, they say truly, that their absence is but temporary; that they had the intention of returning, and they do come back for the purpose of voting. And of all the report of the committee it is only that part of it in which they provide that the registry law shall be universal throughout the State, which I can approve of. That is what these bricklayers, house-carpenters and painters have complained of heretofore, and did last year; that instead of having the same privilege of registering which their fellow citizens in the country had, by having the register to put their names down if they knew them to be voters, or by having a friend to go forward and have their names inscribed on the register, some enemies of these hard-working men had inserted into your laws a provision requiring them to go down, during the time that the register was open, and appear in person before the registers and have their names inscribed, or they would be excluded from the privilege of voting. These men ask no such benefit as this given them here. They know their rights; they know that if they go into the country for the purpose of working they are leaving their homes in the city; that on election day they can return to the city and vote. But what they have complained of heretofore is this: that they have been compelled to go twice to the city, once to register, and again afterward to vote, and each time at a considerable expense. We are here for the purpose of submitting a Constitution to the people that we believe they want, and one that we believe they will approve of; and if we dare to send down a Constitution which we may reasonably believe, from past experience, the people will reject, we are guilty, I believe, of a great act of folly, and are wasting our time here. Owing to the peculiar division of our people in this State, it cannot be expected that any mere party Constitution can prevail. You will always find people enough of both parties; people who are satisfied with things as they are; who live by the present system, and who profit by it; who will vote "no" to any change which this Convention may propose. We are, therefore, bound here to endeavor to send such a Constitution to the people as they will, by a majority, approve of. We must take care, therefore, to lay aside all this war which has heretofore prevailed in this State

for the few years past against the people of our cities, seeking to deprive them in one way or another of the right of suffrage. And this deprivation you are about to continue by this proposed thirty day clause, or, if you please, the four months' residence provision. I see no difficulty in the way. I am satisfied that but few persons who go into the country, to reside for the summer, have not the right to vote when they return; and the laborers that are mentioned in this report will also have the right to vote. And then as to the other class referred to, the Methodist ministers. It is not a matter of doctrine when the Methodist ministers shall be changed in their location, and if they find it burdensome to change within four months, they may ask of the presiding elders of their conference that it shall meet earlier and make the changes so that they can exercise the right of suffrage in common with their fellow citizens. That is an easier thing to do than the other alternative proposed here, which is to open the door so that within the space of one short month, a system which we all deprecate, a system of colonization which can take place from one county to another as well as from one ward to another. I, therefore, hope that before we adopt this first section, we will consider this matter, and ascertain whether we will, with the knowledge that by the adoption of this section as reported, be likely to disfranchise, at the Presidential election, some fifteen or twenty thousand citizens, who will then be citizens, and who, relying on the Constitution continuing as it is, and relying upon the practice in our cities, have, within a month prior to the election of 1866, declared their intentions, and expect within a month prior to the election of 1868, to take the oath and become citizens of the United States. And if we find so great a body of men likely to be disfranchised by this article, may it not have a tendency to induce many hundreds and thousands of those who might otherwise vote for the Constitution, that we shall submit to the people, but for this great disfranchising clause, which might seem to have been inserted for a mere party purpose, to vote against it. The gentleman from Onondaga [Mr. Andrews], in his remarks yesterday, seemed to think that it would be better that a person should be a long time naturalized — as long a time as thirty days before the election — on account of his keeping clear from the corruptions of politics, if I understood his remarks rightly, or something to that effect. I will say to the gentleman I do not understand that remark. I do not understand that politics are necessarily corrupt. I do not believe that politicians are necessarily corrupt. I hold it to be the true function of politics to make all our citizens acquainted with public affairs, that they may understand their rights and their duties as citizens and exercise them. One of the greatest evils that has been complained of by the press, and by parties generally, has been indifference on the part of the people to the exercise of the highest right of a citizen — the right to the elective franchise. Now, it is true as we approach an election there is more interest felt in the election. I do not understand that interest is excitement. During the last election in one of our large cities — in the city

of Brooklyn, where I reside — I suppose there was as much public interest felt in the election as has ever been felt in that city: the number of voters on the day of the election seemed to prove that. I suppose for more than one month before that time I attended a political meeting every night excepting Sundays, and the only political meetings that were held on Sundays were held by a party that I did not affiliate with. [Laughter.] Now, when we had our meetings, we had large numbers of persons who came to attend those meetings. We had able men from all parts of our State and all parts of the country, addressing our citizens in reference to political affairs. I saw no corruption, no excitement even, that was any way unhealthy. True, it is, that the sons of toil came up in their working dress, "unwashed" as they are sometimes called in the pamphlets that have been placed upon our tables; but they came up with clear heads, with sound minds, with well behaved deportment, and they heard all that was said. They deliberated; they went to their respective homes; they came up on the day of election and cast their votes, and in that county cast a vote that astonished a great many. Yet there was no corruption, no excitement there, and of that number were these thousands I have mentioned, who, for the first time within a month prior to that election, were made American citizens by naturalization. It is not, therefore, necessary that we should stigmatize all political excitement as corrupt; when the people are aroused to their duty, when they feel an interest in public affairs, when they come forward on the day of election in large numbers, and in their might, we may look for a healthy state of affairs and a fair expression of the opinions of the people. Therefore I hope the amendment which is before us, of the gentleman from Ontario [Mr. Lapham] to fix this time at ten days, will remain as it is, and that the present Constitution may remain as it is.

Mr. HUTCHINS—Will the gentleman [Mr. Barnard], allow me to ask him a question. I understand the gentleman to say he is in favor of the ten day clause, the same as it is in the Constitution of 1846. I would ask the gentleman why he is in favor of having even a ten day clause in the Constitution.

Mr. BARNARD—Why, because, Mr. Chairman, it is in the present Constitution! [laughter] and for the present, I want to see no change, unless it is called for by the public sentiment, and unless we have seen some public wrong and some public evil to spring out of it. That is the reason why I want it to remain for ten days. I am a little conservative in my notions, I want to go into no change unless I am satisfied it will be for the better, or unless it will remove some existing evil.

Mr. HUTCHINS—Will the gentleman allow me to ask him a further question. I will ask, when this clause was put in the Constitution of 1846, why the members of that Convention did not see fit to prefer the Constitution of 1821, which had no such clause?

Mr. BARNARD—It is enough for me to say, it was put into the Constitution of 1846, it was submitted to the people and received a majority of the votes of the people! That is enough for me. Now, then, let us come to the second branch



of the subject we have before us. The committee have reported a provision to exclude idiots, lunatics, etc., from the right of voting. The gentleman from Ontario [Mr. Lapham] proposes we should insert a clause, confining it to those who are judicially determined to be such, and the chairman of the committee has objected to the insertion of such a clause. What will be the effect on the Constitution, supposing it to be adopted, with the provision as reported by the committee? You would have the inspectors of election exercising judicial powers, and I want to see as little of that as possible. While they are investigating whether a man is an idiot, or a person of unsound mind, they may be excluding two hundred legal voters from the privilege of the elective franchise.

Mr. GREBLEY—I desire to ask the gentleman, if he will allow me, if that is not precisely the case to-day. Suppose an idiot or a notorious lunatic does come up to the polls and offer his vote, I ask whether they do not judge of his qualifications and decide either to exclude or admit his vote?

Mr. BARNARD—That is more than I can tell. If they do, then we do not want to insert the provision in the Constitution; it is sufficient for the purpose if it is done. What I object to, is investing these inspectors of election with any judicial power whatever. If I were to say what was necessary by the law, it would be simply this. "Your duty shall be, to take the vote of every duly registered citizen, deposit it in the ballot box and canvass it afterward; and should an oath be required, put the oath, and so pass on." Why sir, in the election district in which I now reside, at the election in 1866, so great was the crowd of persons seeking to vote, that every person who came into the line after 10 o'clock in the morning, lost his chance to vote. And nothing was done on that occasion but to examine the register and ascertain if the names were on there and to put the oath in case of a challenge, yet more than five hundred persons in that district were excluded from the right of suffrage. But allow the board of inspectors on election day, to investigate whether a man is of unsound mind or not—and what a field of investigation there would be! This very thing was referred to here, in the discussion of yesterday. Those of us who are familiar with our law reports know what has been the action of our courts in this respect. I need only refer to two cases, that have become a part of our judicial history. The Alice Lispenard case, and the Parrish will case, as it was called, which occupied the attention of our courts from day to day, and month to month, in ascertaining what constituted a person of unsound mind. Seven large volumes of testimony were taken in the Parrish will case, to ascertain whether a man was of sound mind when he made that part of his will which was contested. He made a will when he was in good health, and afterward when he was prostrated with disease, he made a codicil and the court finally determined that in regard to all he did after such prostration, that he was not of sound mind enough to make a will. The question of who is an idiot or a person of unsound mind is a question of great difficulty. I

have seen within the last month or two, in some of our leading public journals, that a gentleman who put his name to a certain bail-bond, was an idiot and a madman. [Laughter.] Let us suppose that gentlemen were to walk up to the polls in his election district in Westchester county, to cast his vote, and a voter were to step up and say, "I object to the casting of that vote; I object to it because that man is an idiot and a madman." [Laughter.] Who is to judge of that? Suppose the inspectors of election were the editors of those newspapers I have referred to (one of them an anti-slavery paper), and they should say, "Sir, you cannot vote; you are an idiot and a madman." [Renewed laughter.] The appearance of the man, his highly intellectual countenance, his well known benevolent disposition, his mode of speaking, the musical tones we know the man can utter when he chooses, will all be of no effect with these inspectors. [Laughter.] They will say: "Mr. A., or Mr. G., prove that you did not sign that bail-bond; because if you signed that bail-bond, in our opinion, you are an idiot and a lunatic who ought not to be permitted to vote." [Great laughter, which was promptly suppressed by the Chair.] Now let us come to another class. If I understand the meaning of the word idiot, it is one who is otherwise called a blockhead, and a blockhead, we all know, is a man whose head is made of a block, with no brains in it, and no room to put brains. Then we will suppose a person who issues more proclamations in one month than the President of the United States and the Governor of the State of New York put together, in the city of New York—the head of the city police, were to walk up to one of the polls to vote, and a voter steps forth and says, "I object to that man voting!" "Why?" "Because he is a blockhead!" [Laughter.] And I have seen in one of the leading journals of the city of New York, over the signature of a very distinguished man, and a good judge of human nature, that every man who signed a call for a meeting of a particular club to expel a certain individual for signing a bail-bond, was a blockhead! [Renewed laughter.] Why, sir, the chief of police of the city of New York would be excluded upon any such rule as that! We must not give any opportunity for inspectors of elections to waste the time of the people while they are investigating the question, whether any man is of unsound mind, whether he is a lunatic, a blockhead, or an idiot. Let that fact first be found by some judicial determination, and afterward exclude the person from the privilege of voting, if you will. Then we come to the third proposition before us here, which is in reference to paupers. I have seen (and probably it has been put into the hands of all of us this morning), in the columns of a newspaper in the city of New York, a proposed amendment to the section now under consideration, which is a little more definite as to the parties to be excluded. It definitely excludes the inmates of prisons and almshouses from the right of suffrage. Why did not the committee propose that, and go no further in their attacks upon the poor man?

Mr. GREELEY — If the gentleman will allow me, I will answer his question now. It was



simply because we find that the keepers of prisons and almshouses are in the habit of turning those people out a day or two before the election, so they may get their votes, and then taking them back again after they have voted.

Mr. BARNARD—Well, if that is so, it is a very easy matter for the Legislature to make a law to prevent any abuse of that kind. But the provision here goes further. It says: "No person who at any time within thirty days next preceding, have been a public pauper, shall vote at any election." We have had the definition of what is a public pauper made by our courts, and as early as 13 Johnson's Reports, a man who had been sick and had one load of wood donated to him by the superintendent of the poor, was held to be a public pauper and his children taken away from him and bound out against his will and consent. And every man, although he may never have received but one dollar's worth of wood from the superintendent of the poor, yet if he receives that one within thirty days of an election, he is to be excluded from the right to vote, no matter how unfortunate he may have been in his sickness. It is my fortune to be connected with many institutions in the city of Brooklyn, for the relief of the distressed and sick, and every Saturday night I take my place as treasurer of one of those committees, disbursing not less than \$150 every Saturday night, and from that up to \$350 to those who by misfortune or sickness during the past week have been thrown upon us for aid. To be sure they are not public paupers, but suppose no such institution existed, and persons similarly situated, belonged to no such institution where they could get this kind of aid? Take for instance the month of October, and we sometimes have hard frosts during that month, coming as it does after the summer months, when the usual summer complaints and fevers are so prevalent, and suppose during that time a man is prostrated by sickness and his wife finds she has not a particle of coal to do her usual and necessary cooking with, and she upon inquiring finds that the superintendents of the poor, would send her half a ton of coal if she were to ask for it, as a portion of their outdoor relief, then she sends up and asks for it, gets it, and he is cut off from the right to vote! No matter how intelligent he may be, no matter how long or how arduously he has struggled in behalf of his country in her conflict with her enemies; he is poor, he is without means, a small particle, half a ton or a quarter of a ton of coal given to his family during the month previous to election makes him a public pauper and he is cut off! The gentleman from Rensselaer [Mr. M. I. Townsend] yesterday undertook to justify this provision, and undertook to say, that any man who will so far accept of the money raised from the people by taxation, ought to consent to give up his right of voting. Why ought he? Is it because he is poor? Or because he receives the public money? If I should be inclined to cut off from voting every man who receives the public money raised by taxation, I should begin with the Governor and go down through all the classes of public officers, even though it might be twenty years hence, when

another Convention shall meet to revise the Constitution and make it obligatory upon them to close their session more than thirty days before the election in order that they should receive no portion of the public money. We have men among us who are almost public paupers, who hold public office. They render no equivalent for all they receive, and yet they are receiving public money raised by taxation. The only misfortune of that class of men is, they are not poor, and therefore they do not come within the class of public paupers described here. They do not receive money from the superintendents of the poor or the overseers of the poor. Under that same rule, as laid down by the gentleman from Rensselaer [Mr. M. I. Townsend], every man who sends his children to our public schools, that are supported by public taxation, will be called a public pauper and would be excluded from the right to vote. I trust when we come to look at this question in this light, we shall see there is great danger in sending a Constitution to the people containing any material change in regard to the right of suffrage, that may seem to be an invasion upon rights already exercised. No man can tell at the present time, what may be his situation hereafter; he may be reduced by misfortune or by poverty so it will be absolutely necessary for the preservation of himself and his family that he should receive some relief from our public charities or from the overseers of the poor, and to undertake to cut off that class by the language used here in this provision, in my opinion will endanger the success of the whole Constitution we may send to the people. I, therefore, hope that the liberal amendment which has been offered by the gentleman from Ontario [Mr. Lapham] will be adopted, and that we will not, by this thirty day clause, cut off those who have declared their intention, and who without this exclusion would have the right to vote in 1868; and that we will not give to inspectors of election any judicial power whatever to determine who is an idiot, or a lunatic, or a person of unsound mind; and that we will not say that those who by misfortune and poverty are compelled, within thirty days of an election, to receive relief from the moneys raised for the support of the poor shall be excluded from the right to vote.

Mr. SPENCER—I rise for the purpose of asking the gentleman from Oneida [Mr. Kernan], to modify the language of his amendment, so as to make it conform to the existing Constitution. The provision of the existing Constitution which is intended to be covered by the amendment of the gentleman from Oneida [Mr. Kernan], reads as follows:

"Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny or of any infamous crime."

The report of the committee intending to cover substantially that provision, has changed its language, so far as I can see, without intending to provide for the remedy for any existing mischief in the present Constitution. The language of this provision is, "Felons and persons convicted of bribery." The language reported by the commit-

tee does not provide that a person shall have been convicted of felony, only that he shall be a felon, leaving it to the inspectors of election to determine that fact. I can myself see no mischief in the language of the existing Constitution in that respect, which requires any remedy, and therefore I suggest a modification of the language of the amendment, to conform in that respect.

Mr. KERNAN — I accept the amendment, and will make it substantially to conform by inserting after the word "felony" the word "larceny," and after the word "bribery" the words "or any infamous crime." I believe that meets the suggestion.

Mr. SPENCER — Omitting the word "felon?"

Mr. KERNAN — I have not used the word "felon." As I propose it, it will read "convicted of felony." Insert after that "larceny," and after the word "bribery" insert "or of any infamous crime." I think the language of the present Constitution preferable. I wish to state that I did not desire, in the amendment offered, to interfere with the amendment of the gentleman from Ontario [Mr. Lapham], further than to amend the text in the eighth and ninth lines, as stated in the amendment. The other portion of his amendment I concur in fully. If I may be allowed to make a single suggestion in favor of amending the text, it is not my desire that idiots or lunatics should vote, but it was for the reason that the proposition of the committee is impracticable in my view. As has been well stated by others, the board of inspectors is not the tribunal to decide who are idiots or who are lunatics; and inasmuch as I have never heard of any abuse to call for redress by such an amendment, I trust we shall adhere, in this respect, to the Constitution as it has hitherto existed, and not attempt to have the inspectors of election passing on who are idiots or lunatics. The Court of Errors in this State, in a case coming from the city of New York, held that a person far more incapable than those alluded to by the gentleman [Mr. Greeley], and who, I think, could never be taught to read or say the Lord's prayer, and who constantly required an attendant, in a very learned opinion by a distinguished Senator from the city of New York, held that that person was competent to make a will. If a party had the capacity to make a will I suppose he would have the capacity to vote. I only allude to this as it was a noted case—the case of Lispenard—to show how difficult the question of deciding who are idiots is regarded in law. That was the allegation in that case, and I say that I don't think any such judicial power or duty should be devolved upon the inspectors of election. There might be, as the gentleman says, and as there doubtless has been, from his statement of the facts, now and then a case where there is abuse; but I think the abuse has been very trifling, and the evil of having inspectors of election decide who have sufficient intellect, and who not, would lead to very great abuse and embarrassment; and therefore I believe it would be wise for us to amend the text in that particular, by leaving out the words referred to and by substituting those proposed; and then I would be in favor of the amendment of the gentleman from Ontario [Mr. Lapham], in reference to the thirty days' residence, and in reference to the

exclusion of persons who have received public aid.

Mr. GREELEY—It strikes me that the abuse complained of by the gentleman who last sat down [Mr. Kernan], will be committed by this Convention if we fail to clothe the guardians of the public right and interest in this matter with power to do so. Let us suppose a case. An idiot is brought up by one party who wants to carry an election—an utterly senseless idiot. How is his vote to be kept out? If we say an idiot cannot vote, then he will be kept out; but without it there is no power to prevent that vote being polled in violation of all right and justice.

Mr. C. C. DWIGHT—Will the gentleman from Westchester [Mr. Greeley] give way to allow me to answer his suggestion?

Mr. GREELEY—Certainly.

Mr. C. C. DWIGHT—I think it is within the observation of every member of this Convention, who has been in the habit of attending the polls, that the vote of such a person as the gentleman has alluded to would be kept out by the simple interposition of the challenge, which would require the "utterly senseless idiot," whom the gentleman alludes to, to answer certain questions which it would be impossible for him to answer, and that his vote would thereby be effectually excluded.

Mr. GREELEY—The gentlemen proposes by an indirect way to accomplish a result—to disfranchise a qualified elector—that is, one whom the Convention proposes to allow to vote, and yet by indirection deprive him of his right of suffrage. I think it is better to be honest and straightforward and say he has no right to vote. Another gentleman, from New York [Mr. Gerry] asked "What will you do with the poor soldier who has fought for his country, and who is wounded and disabled and needs aid?" I say that man is not a pauper. It is our duty to see that, by a pension, he is in some measure compensated for his privation and suffering for his country. If we don't provide for him in that way, we are grossly wrong. I would give him a pension sufficient to enable him not to come with his hat in his hand begging for charity from the overseers of the poor. Let us now look a moment at the objection raised by the gentleman from Kings [Mr. Barnard], who gravely argues that this report proposes to shut out the poor and admit the rich in this matter of the thirty days' residence. Why, you are quite aware, and every man is aware, that the citizen who is able to have two residences, nay, who is able to own and to hold, or rent his house in town, and who goes into the country and spends two or three months in summer, retaining his home in the city, does not lose his right to vote. He can come home the day before the election and swear in his vote from the house where he resided, and which all the time has been his home. That is not the class. They do not need any relief. But there is a very much larger class of citizens whose business, whose industry, whose duty, calls them in the pursuit of a livelihood to leave the city and go into the country to work in the summer and fall. They are not able to keep a home in the city, or have a residence there. They close their residence and go into the country temporarily, taking all they have with

them, very likely their wives and children, when they can take them there. Now they come back thirty days before election to the city again, and these persons are not entitled to vote by the Constitution as it stands. These industrious mechanics, if they do vote, they vote by an evasion of the provision of the Constitution. The rich man has no difficulty. He comes back to his home. That is what the poor man cannot do, because he is not able to keep two homes. That was the precise reason laid down in the report for the provision, and yet the gentleman gravely argues here that we propose to give the rich man double chances, and exclude the poor man. Now, as to the statement I made with reference to paupers voting in the city of New York. The gentleman from New York [Mr. Daly], says that that occurred near twenty-four years ago, in 1842. I do not know but it did occur then; but the instance to which I allude occurred in 1846, and that I very well know, because of the contest being made in that House of Representatives, and the member returned being unseated, I was elected to fill the vacancy in November, 1848. I say I do not contradict his statement that such an occurrence took place in 1842, but I know very well that this took place in 1846, when David S. Jackson was chosen a member of Congress over James Monroe, and, it was so decided, by votes polled out of the almshouse. He says this does not now take place. I believe that last fall every voter that could be taken out of the almshouse, that had a vote anywhere, and could be taken out, was taken out, and that such votes very largely swelled the majority for John T. Hoffman in that city. He says, that our almshouse officers there are divided in politics, and that they do not control those votes. I do not understand it to be so. I do not understand that, last fall, James Bowen and Owen Brennan were opposed to John T. Hoffman and in favor of Governor Fenton, and I do not believe they were, although they were nominally republicans—of the Weed stripe. [Laughter]. What I ask is that we have a clear and definite provision on this subject which shall prevent the controllers of almshouses having this tremendous power. I do not say how many times it has been abused; I say we are guilty of abuse if we leave the power in their hands; that our duty here is to make this so plain that they cannot be tempted to control the votes of this class as they will, whether they be outdoor poor or indoor poor, if, during the month previous to election, they are dependent upon public functionaries who dole out charity for their subsistence. The ground taken by the report is that one proper qualification for suffrage is exemption from dependence through pauperism or guardianship. We desire they should be independent voters. Now, a man who is not worth the clothes he stands in may be an independent voter so long as he lives on the means he earns, no matter how poorly; no matter how closely his wants tread upon his earnings, if he earns a dollar a day and lives on that dollar a day no one has any right to say "you must vote as I want you, or as I would have you;" but the moment he sinks into a state of pauperism, from that moment the officer who has control of his subsistence has virtually con-

trol of his vote, and such votes, so taken, the committee desire to shut out, and I ask this committee to concur in that determination.

Mr. CHAMPLAIN—I have been a silent listener to the debate, and I have failed to discover any ground for the exclusion of paupers from the right of suffrage, or any justification for the restriction which this report places upon the naturalized citizen. The learned chairman of the committee [Mr. Greeley] seems to rest the disfranchisement of paupers upon their relation of dependence to the officers charged with their care and support.

Mr. C. C. DWIGHT—I rise to a question of order. The question now before the committee upon the amendment offered by the gentleman from Oneida [Mr. Kernan], which relates simply to the three lines upon page two of the report of the committee and does not include the question of the exclusion of the pauper from the right of suffrage.

The CHAIRMAN—The Chair is of opinion that the point of order is not well taken.

Mr. CHAMPLAIN—I deny that there is any such relation of dependence existing in that case as should call for the application of our organic law. What is this question of dependence? We have heard of employees—of public officers of the nation, and of departments of the government, being sent home just before an exciting election to control, by their votes, such election. We know that in the manufacturing establishments of one section of our country it has been long a cause of complaint that the operatives in these establishments, between whom and their employers there is a dependent condition said to exist, were turned out in droves to vote and control elections. We know that in all the business relations of life there is to some extent this relation of dependence; and if you are to exclude men upon that ground in the one case, why not exclude them in all? It is a fact well known to the members of this Convention that many of these poor laborers are entirely dependent upon their wages for their support. When they are turned off, and their wages are withheld, they pass, by transition, from the condition of what the learned chairman of the committee has spoken of as that of an independent voter to the condition of a pauper, because they are so entirely dependent upon their earnings for their support. As to those persons who are in the custody of keepers of almshouses, I am opposed to the whole system of restrictions upon them. They are intelligent enough to know that it is not the hand of the keeper that feeds them, and that he is the mere executor of a trust, and that it is the public bounty which supports them—that they are supported by law—by authority of the State, and they know enough to know that he cannot withhold this bounty. Again, they know that he is under the vigilance of superior public officers, and this restraint of public duty is operating upon him, while it does not exist in the other cases of a mere private relation of dependence to which I have alluded. I confess I was pained upon the reading of this report, because of the spirit of irony, to use no harsher term, in which this unfortunate class of people were alluded to. I can only account for it by supposing that paupers in the city of New



York are made up of transient, dissolute persons, without occupation it may be, perhaps debauchees and immoral persons, who are congregated there. That is not the class of paupers that we have in the country. As a general thing, in the rural districts many of that unfortunate class of persons are the pioneers of the section of the country where they have come to want. They are the men who have struggled with the early forests, have reared families, and have maintained honorable positions; but when the hand of adversity has been laid upon them they have been reduced to the necessity of accepting public alms. In many of the counties where the distinction between the town and county poor is abolished, you will find these paupers living with some relative who is not entirely able to support them, but who with a little assistance from the public bounty, is enabled to take care of them, and make their condition comfortable. You find them with some old friend or neighbor who has known them in better days, and it is out of a feeling of kindness that they, with only partial compensation from the county, take upon themselves the burden of their support. They are men of intelligence, who are guilty of no crime. They are not malefactors. They are not of that class who can be dragged about in the manner that has been indicated here by some of the gentlemen who have addressed the committee. Sir, in looking into the statistics of the poor which have been laid upon our desks, and considering them in connection with this proposition, I was startled to find that of the number who, in the year 1866, received aid from the public bounty, there were 265,000, and in the year previous 278,000. I will not detain the committee by going through the statistics, and taking out the minors and the females; but a simple mathematical calculation will satisfy any one of the sweeping character of the provision that is contemplated. Is this the boasted philanthropy and spirit of progress of this age that has assembled this Convention for the revision of the Constitution? Is this the rising tide of that philanthropy and reform that is advocated by the learned chairman of the committee [Mr. Greeley], and with which he is imbued, that would bear on its advancing wave five or six thousand poor illiterate colored men into a higher manhood, and invest them with greater rights, and place them upon an equality? Is that wave to submerge and destroy the political rights of 25,000 poor white citizens of the State of New York? The gentleman himself [Mr. Greeley] states the number at from eight to ten thousand. But I plead, sir, for twenty or thirty thousand men who are guilty of no crime, who have been loyal to their country, and upon whom misfortune has fallen, and say that if we are to elevate another class to those rights let us not do it at the expense of striking down the cherished rights of fifteen, twenty, or thirty thousand white citizens of this State. Their name is associated in this report with criminals. When you say that an idiot or a lunatic is to be deprived of the right of voting, the antidote goes with the poison, and the very cause of the exclusion stands as an exoneration of the person. But when you say that the malefactor, the felon, and the pauper,

shall be excluded, then you indissolubly associate him with crime to the last day of his life. He must stand associated in your organic law with crime, from which association he has no power to disconnect himself, and for no other reason than his misfortune. Now, sir, in regard to the next question, and that is the restriction of the right of naturalized citizens to vote. I am opposed to it entirely. At the proper time I shall move an amendment to strike it out. I have listened attentively to what has been said upon this subject, and I can see no reason for that invidious and, as I contend, unjust discrimination against a large and respectable class of our fellow-citizens. The gentleman from New York [Mr. Daly], who ably and eloquently addressed the committee, spoke of the exhibitions in getting out these voters, and of the excitement that culminated on a certain day when these persons were admitted to the right of citizenship. I can see no difference in the character of this exhibition or the evil, whether this excitement shall culminate on the day before election, or ten days before the election, or thirty days before the election. You must have a concentration of effort inevitably, from the very fact that you extend the right of suffrage to this class of persons which will culminate at the same time, whether it be on election day, or ten or thirty days before. I can see no reason why it is a ground for discrimination. It will not be contended that a citizenship of ten days renders the possessor of it any more competent to exercise the right of suffrage, or that it will confer any greater capacity to vote understandingly than a citizenship of one day. He has been among his fellow citizens; he has contemplated citizenship; he has participated in the excitement of the election; and he is as well qualified to vote if he has been naturalized just prior to the election as if he had been naturalized from ten to thirty days before. The courts are not open on election day, and no interference with the election can occur from these proceedings. But, sir, I beg the attention of the Convention to the question whether the exercise of this power is not open to very grave constitutional doubts. It is a subject upon which I have thought some, and it might seem presumptuous, in view of the reports that have been alluded to, that were submitted to the Convention of 1846, to raise any such question here. But, sir, events have transpired within the last twenty years that have attracted the public attention, and fixed it upon the relation of the States to the Federal Union as to the powers of the Federal Government and as to the reserved rights of the States. The powers of States have been lifted to shatter the fair fabric of your national government to atoms. Now is the auspicious time to proceed carefully in the assertion of State rights over any class of citizens, and especially if there is a seeming repugnance, in the exercise of those rights, to the Constitution of the United States and laws of Congress passed in pursuance thereof, which are declared to be the supreme law of the land. The Constitution of the United States vests in Congress the power to establish a uniform rule of naturalization. This power the authors tell us is regarded as exclusive in the general Government and cannot be exercised in any man-



ner by the States. Another provision of the Constitution, article 4, section 2, declares that the citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States. The naturalized citizen, when he is invested with citizenship which he derives directly from the Constitution, which is the supreme law of the land, is invested with certain rights, by virtue of such citizenship, derived, as I have before stated, from a power exclusive in the general government, and over which the States have no control. Now, we are told, by commentators upon the Constitution, that this right of citizenship carries with it certain great fundamental rights, among which are the right to exercise the privilege of suffrage upon terms of perfect equality with the other citizens of the several States; and I invite the attention of the Convention, knowing that I am surrounded by eminent lawyers and jurists, while I review authorities upon that question, with which, I doubt not, they are all familiar, but simply for the reason that the principle is better expressed than in any language that I can use. I read from 3 Story's Commentaries, 674:

"The provision in the Constitution (art. 4, sec. 2), avoids all this ambiguity. It is plain and simple in its language, and its object is not easily to be mistaken. Connected with the exclusive power of naturalization in the national government, it put at rest many of the difficulties which affected the construction of the article of the confederation. It is obvious that, if the citizens of each State were to be deemed aliens to each other, they could not take or hold real estate or other privileges, except as other aliens. The intention of this clause was to confer on them, if one may so say, a general citizenship, and to communicate all the privileges and immunities which the citizens of the same State would be entitled to under the like circumstances."

Chief Justice Kent, in his Commentaries, uses the same language, though he elaborates to some extent in defining what the fundamental rights of citizenship imports.

"The privileges and immunities conceded by the Constitution of the United States to citizens in the several States were to be confined to those which were, in their nature, fundamental, and belonged of right to the citizens of all free governments. Such are the rights of protection of life and liberty, and to acquire and enjoy property, and to pay no higher impositions than other citizens, and to pass through or reside in the State at pleasure, and to enjoy the elective franchise according to the regulations of the law of the State." (2 Kent Com., 36.)

The Federalist, which is acknowledged authority, I believe, upon the subject of the Constitution in speaking of the judiciary of the United States as established by the Constitution uses this language:

"It may be esteemed the basis of the Union that 'the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States.' And if it be a just principle that every government ought to possess the means of executing its own provisions by its own authority, it will follow, that in order to the inviolable main-

tenance of that equality of privileges and immunities to which the citizens of the Union will be entitled, the national judiciary ought to preside in all cases in which one State or its citizens are opposed to another State or its citizens." (Federalist, vol. 2, p. 306.)

And finally, Sir, the only adjudication upon this subject, that has fallen under my observation, is a decision in the Circuit Court of the United States in the District of Pennsylvania and New Jersey, in which Judge Washington, in considering this very provision, uses this language:

"The inquiry is, what are the privileges and immunities of citizens in the several States? We feel no hesitation in confining these expressions to those privileges and immunities which are in their nature *fundamental*; which belong of right to the citizens of all free governments; and which have at all times been enjoyed by the citizens of the several States which compose this Union, from the time of their becoming free, independent and sovereign. What these fundamental principles are, it would perhaps be more tedious than difficult to enumerate. They may, however, be all comprehended under the following general heads: Protection by the government; the enjoyment of life and liberty, with the right to acquire and possess property of every kind, and to pursue and obtain happiness and safety, subject nevertheless to such restraints as the government may justly prescribe for the general good of the whole. The right of a citizen of one State to pass through or to reside in any other State, for purposes of trade, agriculture, professional pursuits or otherwise; to claim the benefit of the writ of habeas corpus; to institute and maintain actions of any kind in the courts of the State; to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the State; may be mentioned as some of the particular privileges and immunities of citizens, which are clearly embraced by the general description of privileges deemed to be fundamental; to which may be added, the elective franchise, as regulated and established by the laws or Constitution of the State in which it is to be exercised." (4, Washington's Rep., p. 380.)

Mr HUTCHINS—Will the gentleman give way for one moment? In the State of Massachusetts a colored man can vote on the same terms and conditions as the white man? Now, upon the principle contended for by the honorable gentleman from Allegany [Mr. Champlain], why could not such black man, a citizen of Massachusetts, if he removes into this State, vote, although he may not be seized of property of the value provided for in the Constitution of 1846?

Mr. CHAMPLAIN—The question which the gentleman suggests, I do not know that it has ever arisen, but when it shall arise, if there is any thing in the argument, I shall not deny but that the colored citizen of Massachusetts, when he comes into this State, is entitled — *if he is a citizen of the United States, and entitled to the immunities and privileges of such*—to the terms of perfect equality with the citizens of the State of New York.

**Mr. HUTCHINS**—Will the gentleman give way for a moment for another suggestion? Is not a citizen of the United States a citizen—

**Mr. CHAMPLAIN**—I cannot give way. I object to being interrupted in this way.

**Mr. HUTCHINS**—I am not interrupting the gentleman.

**Mr. CHAMPLAIN**—When a person by virtue of the Constitution of the United States, which is paramount to State authority, is made a citizen of the United States, it is said he is invested with these fundamental rights, the right to hold property, the right to exercise the elective franchise upon terms of equality with the other citizens of the State, and if the gentleman will understand my argument the point of it is this, that you shall not discriminate against the citizens, or any class of citizens, to deprive them of equal rights with the rest if they can trace their right of citizenship to this supreme law of the land. You may exclude the adopted citizen and white citizen alike; you may require a one year or two years' residence; you may require that persons shall be naturalized citizens for thirty days or three years, but you shall treat all alike on terms of perfect equality where they come into your State clothed with the panoply of citizenship, under the Constitution of the United States. Will the honored Chairman [Mr. Greeley] contend that your Committee on the Bill of Rights may report here, that a naturalized citizen residing in the State of New York may hold property provided he has been such for three years or thirty days? May they say that he shall be entitled to the writ of the habeas corpus, provided that he has been a citizen of the United States for thirty days or three years? May they say that the home of the native citizen shall be his castle, secure from invasion, and that his property shall not be taken without due process of law? But may they discriminate and take away the rights of the naturalized citizen, naturalized under the Constitution in that respect? I would ask the learned chairman sir, what is this right of citizenship worth, if these great and fundamental privileges, which it is asserted, it carries with it, may be stricken down one by one, by invidious discriminations against classes of citizens, until they are entirely destroyed? Now, Mr. Chairman, for the purpose of illustrating the position taken by the committee in the report, let us suppose a case. I know there are amendments to the Federal Constitution pending which are intended to elevate to citizenship that large and unfortunate class of persons existing in the Southern States, who have lately been made freemen by the abolition of slavery—without undertaking to say what those constitutional amendments are, or to examine them, or to speak of their policy or the propriety of pressing them in the present condition of the country, it is enough for the purpose of my illustration for me to say: Suppose the gentlemen from Westchester [Mr. Greeley] and his friends should be enabled to carry those constitutional amendments, and that it was clearly and indisputably the power of Congress to lift up that degraded race to the enjoyment of all the rights of citizenship, as

intended by the constitutional provisions in question. And suppose that Congress, instead of providing courts in which they should receive their certificates, should by law, directly in accordance with the Constitution, declare that from this time henceforth they should be citizens of the United States, and invested with all the privileges and immunities as such, will the gentleman contend for one moment, that some southern State where a Convention then shall assemble, clothed with the powers of the State government that concededly have the right to exercise the powers of sovereignty, that they may strike down those rights, acting upon the prejudice of color, and may by enactment, repugnant to the Constitution of the United States, making the very disqualification that it was its purpose to remove, the ground, and say that the immunities and privileges granted by the Constitution, shall not apply to any citizen unless he shall have been a freeman for thirty years, or a citizen of the United States for thirty years or thirty days. I warn gentlemen that this power they have asserted, if recognized in the great Empire State of New York, will stand as an overshadowing precedent to control events which all can see through the unexplored pathway of the future, and it may return in future time to trouble the inventor, and be used to strike down every thus acquired right of the colored man. Let the gentlemen consider well before they use this power here and now against the adopted citizen. What is this sacred right of citizenship imported under the power of this Constitution? Is it a right that can be hawked at and torn away by State authority? Sir, in the better days of the republic, there was a man who was a political exile from his own country where he had followed the flag of liberty until it went down in the night of despotism. He made this country his asylum. He afterward wandered abroad and at the port of Smyrna he was seized, by the tyrannical hand of Austria for his political offense. He had then done nothing but declare his intention to become a citizen of the United States. But what was the action of our government? In tones as clear as the notes of a silver trumpet which thrilled and electrified the nation, the right of his nationality was asserted. His cry, though feeble and far off, fell upon the quick ear of a great people and the arm of this mighty republic was stretched forth to succor him and at the mouth of the cannon he was surrendered from the prison ship in which he was confined. The principle of this nationality with which the citizen is invested, is that as long as he can discern every star in its place upon the ensign, he cannot wander so far from his country and his home in any legitimate pursuit, but that he carries with him and is protected by his panoply of nationality and the ruthless hand of tyranny and oppression cannot be laid upon him with impunity. It is kindred to that other great national principle, that the deck of an American vessel is as sacred as the soil of the Union, and the colors that float at the mast-head are the credentials of our seamen! I trust that in this Convention, and in this age of the world, nothing will be done to strike down this great right or impair it, in any respect. The language of this report is—

"Whites and blacks are required to render like obedience to our laws, and are punished in like measure for their violation. Whites and blacks were indiscriminately drafted and held to service to fill our State's quotas in the war, whereby the republic was saved from disruption. We trust that we are henceforth to deal with men according to their conduct, without regard to their color. If so the fact should be embodied in the Constitution."

A very slight extension of the spirit of philanthropy, that prompted this paragraph in this report, would have added to it, "or their birthplace," so that it would read:

"We trust that we are henceforth to deal with men according to their conduct, without regard to their color or *their birthplace*. If so, the fact should be embodied in the Constitution."

What reason is there, sir, waiving the Constitutional one, to which I have invited the attention of the committee, for excluding this class, and including the native citizen irrespective of color? Are they not loyal, are they not patriotic? Have they not carried your eagles over a hundred battlefields? Have they not aided to preserve the nationality of this country and of this government? Have they not the right to sit down now and enjoy this restored and preserved nationality with the native citizen upon terms of perfect equality? At any rate, sir, it seems to me it is more in accordance with the spirit of the age, and the patriotic principles with which it is imbued to wait until the grass has grown green upon their thousand graves, and until their wounds, received in honorable warfare, have healed, before we proceed to inflict another stab, by increasing and enlarging an invidious discrimination against them.

Mr. ENDRESS—In regard to this amendment Mr. Chairman, I wish to call the attention of the eminent gentleman from Oneida [Mr. Kernan], to the fact that the terms which he has inserted in his amendment very greatly enlarge the prohibition or exclusion of voters. He has taken the language from the second section of the Constitution of 1846, which says "that laws may be passed excluding from the right of suffrage, all persons who may be convicted of bribery, larceny or any infamous crime." Now, sir, these words are to be put into our Constitution where it amounts to an actual prohibition, an utter and entire prohibition, and I think the gentleman did not intend that, for these words are of such large comprehension that the Legislature has never acted upon them. Observe, sir, the language includes "larceny"—petit larceny, for instance—and "infamous crime," a word of no signification in the law. I think if the gentleman will reflect upon his resolution, he will either withdraw it or amend it. As it is now, I think the Convention would hardly undertake to put it into the provision we are considering. The provision we are now considering, is a definition of the word elector—that he shall be a citizen of the United States, that he shall have resided a certain length of time within a district, that he shall be a man not tainted with crime, etc. But this prohibition will very largely and indefinitely extend this exclusion.

Mr. Chairman, I move that this committee do now rise, report progress and ask leave to sit again.

The question was then put on the motion of Mr. Endress, and it was declared carried.

Whereupon the committee rose and the President resumed the chair in the Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; that they had made some progress therein, but not having gone through therewith, had instructed their chairman to report the fact to the Convention and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

Mr. GREELEY—I now move that this Convention take a recess until four o'clock P. M.

Mr. BARNARD—I move that this Convention do now adjourn.

The PRESIDENT—The motion of the gentleman from Westchester [Mr. Greeley] is not amendable.

The question was put upon the motion of Mr. Greeley.

Mr. E. BROOKS—I rise to a point of order. Before the vote is announced, I insist upon my point of order, which is that a motion to adjourn takes precedence of a motion for a recess.

The PRESIDENT—The point of order is well taken. The question is upon the motion to adjourn.

The question was then put on the motion of Mr. Barnard, and it was declared carried.

So the Convention stood adjourned.

THURSDAY, JULY 11, 1867.

The Convention met at 11 o'clock.

Prayer was offered by Rev. WILLIAM WYATT.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. CORBETT presented the credentials of Mr. Frank Hiscock, a delegate elected from the 22d senatorial district, at a special election held on the 25th of June, 1867, to fill the vacancy occasioned by the death of Mr. L. Harris Hiscock.

Mr. FRANK HISCOCK appeared in the Convention, was administered the constitutional oath of office by the President, and took his seat.

Mr. CURTIS presented the petition of Charles J. Seymour and five hundred and one others, citizens of the county of Broome, asking for equal suffrage for men and women.

Which was referred to the Committee of the Whole.

Mr. CURTIS also presented a memorial from J. R. Barbour, suggesting plans for the prevention of frauds on the government.

Which was referred to the Select Committee on Official Corruption.

Mr. GRANT presented the petition of George M. Mead, S. Manderville, and thirty-four other citizens of Masonville, Delaware county, praying that a separate provision, preventing the sale of intoxicating liquors as a beverage, be submitted to the people for their approval.



Which was referred to the Committee on Adulterated Liquors.

Mr. KRUM presented the petition of John H. Ryder and ninety others, men and women, of the town of Richmondville, in the county of Schoharie, praying for the submission of a "separate clause" prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT presented the petition of E. Briggs and others, in favor of prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. HATCH presented the petition of Rev. J. C. Lord and others, praying that a clause be inserted in the Constitution prohibiting the donations of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

The PRESIDENT presented a communication from the clerk of the court of appeals, in answer to a resolution of the Convention relative to the funds in the hands of the clerk of the court of appeals.

Which was referred to the Committee on the Finances of the State, and ordered to be printed.

Mr. FOLGER gave the following notice:

That he will at some early day, move to amend Rule 41, so as to provide that a greater number of copies of each document, printed, be furnished to each member of the Convention.

Mr. SEAVER, from the committee on Printing, made the following report:

ALBANY, JULY 11th, 1867.

Your Committee on Printing, to whom was referred the communication from Francis Lieber, on the unanimity of jurors, respectfully beg leave to report back to the Convention the said communication and ask to be discharged from the further consideration of the same, and that it be referred to the Committee on the Judiciary.

Mr. FOLGER—The Committee on the Judiciary have already been discharged from the consideration of that subject, inasmuch as it more properly belonged to Committee No. 1 on the Preamble and Bill of Rights. I move to amend the report of the committee so that the resolution may be referred to Committee No. 1.

The amendment was accepted.

The question was then put upon agreeing with the report of the committee as amended, and it was declared adopted.

Mr. MERRITT offered the following resolution:

*Resolved*, That the question of admitting females to the right of suffrage, be submitted to the electors of the State as a separate proposition, either in the year 1868 or 1869.

Which was referred to the Committee of the Whole.

Mr. CORBETT offered the following resolution:

*Resolved*, That the Committee on Counties, Towns and Villages, their organization, government, and powers, be requested to inquire into the expediency of conferring upon the boards of supervisors of the several counties full and exclusive jurisdiction over all matters of a purely

local character (as to which under the present Constitution the State Legislature exercises full jurisdiction), within the respective limits of such counties; and especially embracing the following subjects, viz.:

1. The laying out and construction of roads and bridges in the incorporated villages and in towns, and the raising of the necessary funds for such purposes.

2. The raising of money, by loan or tax, for town, village, or county purposes, and the authorizing educational, charitable or religious corporations to purchase, hold, or sell real estate.

3. The confirmation of the proceedings of towns and incorporated villages, their officers, and also of the executive officers of counties.

4. The purchase of real estate for the use and benefit of the county, and the sale of the same:

5. The conferring of charters for the construction of horse railroads extending beyond city limits; and also for lines of ferries outside of city limits.

6. The incorporation of villages and the defining and settling of their boundaries.

7. Changing the names of towns, villages, individuals and corporations within the limits of said counties.

8. The widening, deepening, straightening and cleaning of the channels of streams, and declaring them public highways.

9. The drainage of swamps.

10. The correction of erroneous and illegal assessments.

Which was referred to the Committee on Counties, Towns and Villages, etc.

Mr. LANDON offered the following resolution:

WHEREAS, Justice should be administered without delay; and

WHEREAS, Four-fifths of the judgments from which appeals are taken to the court of appeals are affirmed, thus showing the folly of the appeal, and the remaining one-fifth which are reversed are usually reversed by a divided court, thus creating a doubt as to the correctness of the final judgment, and

WHEREAS, The Legislature can harmonize the law in case of conflicting decisions of the general term in the several districts, therefore

*Resolved*, That the Judiciary Committee be requested to inquire into the expediency of abolishing the court of appeals.

Which was referred to the Committee on the Judiciary.

Mr. FULLER offered the following resolution:

*Resolved*, That it be referred to the Committee on Education to inquire into the propriety of inserting in the Constitution a provision for the appointment of a superintendent of public instruction to take charge of the educational interests of the State.

Which was referred to the Committee on Education.

Mr. JARVIS offered the following resolution:

*Resolved*, That it be referred to the Committee on the Powers and Duties of the Legislature, to inquire into the expediency of so amending the Constitution as to prevent the Legislature of this State passing any law imposing fines or penalties in money, as a punishment for crime or misdemeanor.



Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BICKFORD called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That hereafter, until otherwise ordered, the daily sessions of this Convention shall begin at ten o'clock in the forenoon.

Mr. BICKFORD — I move to amend that resolution, in accordance with the suggestion of some friends yesterday, by striking out the word "hereafter" and inserting the words "after this week."

The PRESIDENT — There having been no action taken on the resolution, it will be amended as requested by the mover.

Mr. ALVORD — I move, for the present, that this resolution lie upon the table.

The question was put on the motion of Mr. Alvord and it was declared carried.

Mr. BECKWITH called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Senate Committee on the investigation of canals, be and they are hereby requested to furnish to this Convention, the evidence so far as the same has been taken by them, and especially the evidence in respect to the Champlain canal.

Mr. C. L. ALLEN — Before the consideration of that resolution, I beg leave to state that I saw one of the members of that committee yesterday, and had a conversation with him upon that subject. He informed me that the committee had received the resolution passed by the Convention some few days since, and had directed the stenographer to have a copy of the testimony made as soon as possible and transmit it to the Convention, that the testimony is very voluminous, and it would take some time to have a copy made, but as soon as it was copied it would be transmitted.

Mr. BECKWITH — If the Senate Committee have received a request of the Convention, I am willing that this resolution should be passed over.

The resolution was ordered to lie on the table.

Mr. BECKWITH called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Auditor of the Canal Department be and he is hereby requested to furnish to the Convention a copy or copies of contracts now in force for repairs and improvements, of the Champlain canal; and also, any and all assignments of such contracts, or any of them, by the contractors, and any and all powers of attorney given by such contractors, or any of them, to other persons to perform on their part such contracts, or any of them.

Mr. PROSSER — I move to amend the resolution, so as to include all the canals of the State as well as the Champlain canal.

Mr. BECKWITH — I accept that amendment.

The question was then put on the resolution as amended, and it was declared adopted.

Mr. CHURCH called up for consideration a resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Comptroller and the Auditor of the Canal Department be requested to report to this Convention a statement of all sums advanced or paid for canal purposes or on canal debts, from other sources than canal revenues, and all sums advanced or paid from the canal revenues for other than canal purposes or on canal debts (specifying such purposes), in each year from 1817 to the present time; and also the interest upon each item from the time it was paid or advanced, to the present time, stating the items of interest separately from the items of principal.

The question was then put on the resolution, and it was declared adopted.

Mr. RATHBUN offered the following resolution:

*Resolved*, That the Committee on Canals be requested to inquire into and report to this Convention, as to the propriety of requiring the several railroads in this State to establish annually, on or before the first day of May, a tariff of charges on freight to be transported on said roads, for the year thence ensuing; and also as to the propriety of restricting said roads from increasing said charges during said year, beyond such percentage as will compensate said roads for the increased expenses during the suspension of navigation upon the canals of this State.

Which was referred to the Committee on Canals.

Mr. VERPLANCK called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Auditor of the Canal Department report to this Convention, the number of breaks in the Erie canal within the last ten years, the expense of repairing the same, and the length of time that each break interfered with the navigation of the said canal.

The question was then put on the resolution, and it was declared adopted.

Mr. BARTO called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read from the resolution as follows:

*Resolved*, That the Superintendent of Public Instruction be requested to prepare, as soon as possible and communicate to this Convention, a tabular statement, showing:

1. The whole number of children in each county in the State entitled to attend common schools each year since 1840.

2. The number of children attending such schools in the several counties each year since 1840, and the number not attending.

3. The amount of taxation imposed upon the people in the several counties of the State for school purposes, in each year since 1840, State, county, town, and municipal tax, each stated separately, and the percentage each of State, county, town, and municipal tax, upon the amount of taxable property.

4. The ratio of taxation to the whole number of children entitled to attend common schools in each year since 1840.

5. The ratio of taxation to the number actually in attendance in each year since 1840.

6. The ratio of increase in the attendance upon schools in each county, as taxation has been increased.

7. The number of such schools which have become free, and the year in which they became free.

8. The ratio of increase or decrease in attendance upon such schools in municipal corporations, as have been made free, to the whole number of children entitled to attend such schools.

And further, that the Superintendent be requested to report to the Convention, how soon he can make the above statement.

Mr. RATHBUN — I know but very little of the subject-matter of this resolution, but I have had some conversation with the Superintendent of Public Instruction and he stated that it would take all his clerks for six months to answer the inquiries contained in the resolution; that as to a large portion of the matter called for, there are no records in the office which would give it. The resolution goes back to a period when no records were kept and there are no means accessible for obtaining the information. I would suggest to the mover of the resolution that it would perhaps be better to consult with that officer and learn from him how much of the information he can furnish and in what time. It would be of very little use to the Convention to have a report made here six months hence, because, I suppose, it is very likely we shall have got through before that time with our labors. It seems to me we are rolling up these inquiries, requiring an amount of labor beyond the capacity of the department to furnish, when we ought, if we can, to restrict it so as to make it as available as possible.

Mr. BARTO — I don't wish to require impossibilities from the Superintendent of Public Instruction, but I think it would be better to let the resolution go to him and let him report what information he can give and state the difficulties of giving the residue. If it is information he cannot give, I do not wish to trouble him with it.

Mr. W. C. BROWN — I wish to say, it seems to me, it is entirely unnecessary for us to put the State to the expense of obtaining all this mass of information called for. I think the resolution ought to lie on the table and be printed, in order that we may see precisely and definitely what is called for, and inform ourselves what would be the probable expense and outlay of procuring the information. I move that the resolution do lie upon the table.

The question was put upon the motion of Mr. W. C. Brown and it was declared carried.

The Convention then resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to hold office, Mr. ALVORD, of Onondaga, in the Chair.

Mr. C. C. DWIGHT — I do not rise, Mr. Chairman, to prolong the very interesting debate which now, for two days, has occupied the attention of the Committee of the Whole, further than to say that it seems to me that the discussion, so far as it has proceeded, has disclosed the fact that the

propositions reported by the Committee on the Right of Suffrage, and the Qualifications to hold Office, so far as they have been under consideration in this committee do not, either, in substance or in form meet the views of this Convention, nor are likely to be as acceptable to the people as the Constitution as it stands to-day, approved by the experience of twenty years with the advantage of judicial construction upon very many, if not all, of its provisions. I propose, therefore, sir, if it be in order, to offer as a substitute for the whole of the first section of the report of the committee, the following sections, and I will state in substance what they are. The first section is in the precise language of the first section of article two of the Constitution of 1846, except that it strikes out that provision, deemed invidious and unjust by very many, not only in this Convention, but of the people of this State, which imposes a property qualification upon a certain class of the citizens of this State. The second section proposed in this substitute is in the language of the second section of the present constitution, except that it embodies at its close one provision which is contained in this report of the committee, to wit.: After providing that the Legislature may pass laws depriving of the right to vote at any election, those persons who are interested in any bet or wager, it goes on to provide further that they may thus provide for depriving of such vote any person who shall receive or expect to receive pay, or offer to pay any money or valuable thing to influence or reward a vote to be given at any election. Such, sir, is the substitute which I propose to offer now, if it be in order.

The CHAIRMAN — The Chair will inform the gentleman from Cayuga [Mr. C. C. Dwight] that an amendment to an amendment being already pending, his proposition is not now in order.

Mr. KERNAN — If I withdraw the amendment which I have offered to the amendment of the gentleman from Ontario [Mr. Lapham], will it then make the proposition of the gentleman from Cayuga [Mr. C. C. Dwight] in order.

The CHAIRMAN — If the proposition of the gentleman from Oneida [Mr. Kernan] is withdrawn, the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] will be in order.

Mr. KERNAN — Then I withdraw my amendment for that purpose.

The CHAIRMAN — The gentleman from Oneida [Mr. Kernan] having withdrawn his amendment, the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] is now in order.

Mr. C. C. DWIGHT — I ask that the substitute be read.

The SECRETARY proceeded to read the amendment as follows:

Substitute for the whole of Section 1, the following:

§ 1. Every male citizen of the age of 21 years, who shall have been for ten days a citizen of the United States, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county where he may offer his vote, shall be entitled to a vote at such election in the election district of which he shall be at the time a resident, and not

elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election a resident of the district from which the officer is to be chosen for whom he offers his vote; *Provided*, That, in time of war, no elector in the actual military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the State; and the Legislature shall have power to provide the manner in which, and the time and place at which such absent elector may vote, and for the canvass and return of their votes in the election districts in which they respectively reside, or otherwise.

§ 2. Laws may be passed excluding from the right of suffrage, all persons who may have been, or may be convicted of bribery, larceny, or of any other infamous crime; and for depriving every person who should make or become directly or indirectly interested in any bet or wager dependent upon the result of any election, or who shall receive, expect to receive, pay or offer to pay any money or valuable thing, to influence or reward a vote to be given at any election, of the right to vote at such election.

Mr. FOLGER—I wish to ask whether the amendment of the gentleman from Jefferson [Mr. Bickford] has been withdrawn?

The CHAIRMAN—The Chair understands that the amendment of the gentleman from Jefferson [Mr. Bickford], was withdrawn by the mover.

Mr. FOLGER—Then it leaves pending only the amendment offered by myself?

The CHAIRMAN—It leaves pending only the amendment offered by the gentleman from Ontario [Mr. Folger], as modified by the acceptance of the amendment offered by the gentleman from Ontario [Mr. Lapham].

Mr. FOLGER—Then is it in order for me to accept the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

The CHAIRMAN—It is in order.

Mr. FOLGER—Then I accept the amendment.

Mr. MURPHY—I offer the following amendment.

The SECRETARY proceeded to read the amendment, as follows:

Amend section 1 of article 1 by adding thereto, as follows:

No man of color, unless he shall have been for three years a citizen of this State, and for one year next preceding any election shall have been seized and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and shall have been actually rated and paid a tax thereon, shall be entitled to vote at such election; and no person of color shall be subject to direct taxation unless he be seized of such freehold estate; *Provided*, however, that if the qualified electors of the State shall, at the general election, to be held in November, 1867, on a proposition to be separately submitted in relation to suffrage of men of color, shall determine in favor of suffrage to such men of color, then all persons of color shall be entitled to vote at any election, anything in the existing Constitution to the contrary notwithstanding.

Mr. M. I. TOWNSEND—Early in this debate—  
Mr. MURPHY—I believe Mr. Chairman, I have the floor.

The CHAIRMAN—The Chair is of the opinion that the gentleman from Kings [Mr. Murphy], is entitled to the floor in his proposition.

Mr. M. I. TOWNSEND—If the gentleman desires it, certainly.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Murphy to the amendment offered by Mr. C. C. Dwight, to the amendment of Mr. Folger, and which had been accepted by Mr. Folger.

Mr. MURPHY—The object of this amendment, perhaps, is sufficiently obvious, without any further explanation. Still, it may be necessary to give a brief statement of its purpose, the reasons of it, for the present, and possibly for the future understanding of it. It will be observed, sir, that it adopts the provision in the existing Constitution of the State, word for word, in regard to persons of color. It makes no change in that respect, except the contingency which it contemplates, to which I will presently refer. In presenting this amendment I have followed what I have believed to be the public sentiment of the State, as repeatedly and distinctly affirmed upon this subject. That sentiment has been adverse to extending the elective franchise indiscriminately to persons of color, because it seems inexpedient for political reasons, and because it was deemed by many morally and socially wrong. I, for one, concur in this view. I do not believe that the extension of the elective franchise to this class of persons will add any strength to our government; that it will tend to good government; but, on the contrary, that it will confound the races, and tend to destroy the fair fabric of democratic institutions, which has been erected by the capacity of the white race. I am aware, sir, of course, that this provision as it is in the existing Constitution, which is proposed by my amendment to be re-affirmed in the Constitution we are constructing, is inconsistent with the general principle which I have laid down, and that in admitting men of color to vote, with a proper qualification, it will seem to admit their capacity, which is denied by the general principle. If, sir, this were an open question, if it were to be considered for the first time, I would not introduce even the property qualification, as the majority of the electors of this State, at a very decided vote, have deemed it proper to give the elective franchise to the class of persons to which it relates. I do not deem it proper for me at this time to make any change. The only objection I have is one simply of expediency. I deny in toto the position of the gentleman from Rensselaer [Mr. Townsend] announced yesterday, and I do not announce to-day when I will announce that same purpose, that that man to participate in government. The gentleman founded his argument on the Declaration of Independence, and the doctrines therein recited. I lay down that "all men are c

and "that government derives its just power from the consent of the governed. Now sir, in my judgment those doctrines laid down in the Declaration of Independence have no reference whatever to this question and cannot be introduced in support of the views of those who maintain the natural right to govern. If so, how strangely the men of the Revolution and the men who framed that instrument acted, and how inconsistent. Look at the Constitutions of the different States which were adopted after the Declaration of Independence; examine their provisions, and you will not find a single one in which a property qualification is not required of the elector, except perhaps in a single State, and that a southern State, and there only to a partial extent—I mean the State of Georgia, which did allow mechanics to vote for officers without a property qualification. Now could those men who sent forth that celebrated document which contains the principles to which the gentleman from Rensselaer [Mr. M. I. Townsend], referred, have intended in that enunciation to consider the right to vote—the right to govern, as it were—an inalienable, natural right? They could not have been guilty of the gross inconsistency which followed from their conduct in adopting the State Constitution immediately afterward. What is a natural right—an inalienable right of man? It is a right which pertains to every human being, and pertains to him in all the relations of society; pertains to all conditions; pertains, of course, to the man of color as well as to the white man; pertains to the woman as well as to the man; and pertains to the child as well as to the grown person. It is the right, as specified in the Declaration of Independence itself, the right to life, liberty, and the pursuit of happiness; the right to remove from one place to another. Perhaps there are others, but they may all be summed up in that phrase of the Declaration of Independence itself, the right to life, liberty and the pursuit of happiness. This pretended natural right of man to govern is a perfect absurdity. Where do you and I get the right to govern any one man? Whence comes this right of a majority to govern a minority? There is no natural right in that. It is merely a form of government which society has adopted as the best form of government; the right to vote is merely a right, as stated by the gentleman from Broome [Mr. Hand], yesterday, conferred by society—a franchise to be exercised for the purpose of good government. Such are my views of this question, and with such convictions have I presented this amendment. I will not go further. It is not necessary for me to say anything more in regard to the black man, than that I believe it is inexpedient, nay, it is wrong to place him upon a political equality which will lead to a social equality with the white race, tending as I said before, to confound the races, and bring us to a condition not much superior, if they were in numbers sufficient, to the people of Mexico. Of course I do not apprehend any difficulty here from the small number of blacks that may be introduced to this right of elective suffrage, but I stand upon the principle. It is the great political ques-

tion that agitates the country, and the example of the State of New York would be used perhaps to introduce the elective franchise to blacks in communities where perhaps they may equal, if not outnumber my own race. Now, sir, without going any farther into this argument I will state further what is proposed by my resolution—I propose that this question of the extension of the right of suffrage shall be submitted to the people by a separate proposition. I think it is fairly to be presumed that the people of this State are opposed to negro suffrage (if not I may be allowed to use an expression without intending to convey by it anything offensive to the race); their repeated acts in that respect show it, and we should not endanger this Constitution by placing in its body, by incorporating in the instrument itself, a provision which is obnoxious to that majority, and which, of course, would cause them to reject the Constitution, however good you may make it in other respects. And in the amendment I propose, nothing is lost to those who believe that this right should be exercised by the negroes. If there is a majority of the people in this State who are disposed to confer on them the right of suffrage, it can be done under a separate provision and if they do so, no one will acquiesce in it sooner than I will. But I ask at the hands of this Convention, that the question may be submitted to those who form the constituent body of our government. I propose further in this proposition, that whatever may be the fate of the Constitution which we shall submit, whether it shall be adopted or not, if the majority of the people of this State shall determine that negro suffrage shall be the rule, it shall be incorporated in the present existing Constitution.

Mr. M. I. TOWNSEND—In rising to discuss this question I must pause for a moment to congratulate my friend from Broome [Mr. Hand] upon his ally and upon the excellent use which he finds so soon made of that most statesmanlike doctrine which that gentleman laid down the other day. For some reason, which I am unable to explain, I seem to have given offense either to the intellectual or the sensitive man from Broome [Mr. Hand], and it resulted, certainly, in a very severe excommunication, under which I suffer somewhat at the present time. My friend from Broome [Mr. Hand] in the first place held me up here as the utterer of a monstrous doctrine, when I asserted that man had a natural right to participate in the administration of the government under which he lives. So much was the gentleman from Broome [Mr. Hand] excited, that he himself misunderstood—

Mr. FOLGER—Did the gentleman [Mr. M. I. Townsend] say the natural right to participate in the government, or the natural right to vote?

Mr. M. I. TOWNSEND—The natural right to participate in the administration of the government under which he lives was the doctrine which I laid down.

Mr. FOLGER—The gentleman [Mr. M. I. Townsend] was misunderstood, for I think I distinctly heard him say the natural right to vote.



Mr. HAND — I certainly so understood.

Mr. M. I. TOWNSEND—My friend [Mr. Hand] did not report me so in his speech. My friend from Ontario [Mr. Folger] must have mistaken the conversation we had in the library for a conversation we had in this Convention.

Mr. FOLGER—Perhaps the change of phraseology was the result of that conversation. [Laughter.]

Mr. M. I. TOWNSEND—If it was, I should not shrink even from the doctrine I laid down in the library to my friend from Ontario [Mr. Folger]; and I say to my friends who come here, instructed by their constituents to extend the right of suffrage to the colored race, that if they come upon this floor, and give up the argument at the outset, their colored friends will accomplish very little from their advocacy. But I will go on, if the gentleman will allow me. I say that my friend from Broome [Mr. Hand] was so excited from some cause, I know not why, that he put into my mouth a word I certainly did not utter, and a word which the printed report of my remarks will show I did not utter, and that is the word "inalienable," because I held then, as I hold now, that a man may alienate every right under the government under which he lives. I say my friend from Broome [Mr. Hand] held me up as a monster for having laid down the doctrine that a man had a natural right to participate in the administration of the government under which he lived, and after giving me an excoriation for laying down that doctrine—

Mr. HAND—I call the gentleman to order.

Mr. M. I. TOWNSEND—I hope the gentleman will not interrupt me.

Mr. HAND—I rise to a point of order. I deny having spoken of the gentleman as a monster, or using any language—

The CHAIRMAN—The Chair is of the opinion that under strict parliamentary rules the remarks of the gentleman from Rensselaer [Mr. M. I. Townsend] are not in order, although not for the reason assigned by the gentleman from Broome [Mr. Hand].

Mr. M. I. TOWNSEND—My remarks are directed to the printed report of the speech of that gentleman.

Mr. HAND — The report does not show any such language. I beg—

The CHAIRMAN — The Chair will inform the gentleman that order must be preserved in the committee.

Mr. M. I. TOWNSEND — My remarks were directed to the printed speech of that gentleman, which I understand—

The CHAIRMAN — The Chair will inform the gentleman from Rensselaer [Mr. M. I. Townsend] that his attention has been called to the fact by motion in the committee, and it must, therefore, hold that the gentleman [Mr. M. I. Townsend] cannot, under the guise of a debate, upon the proposition of the gentleman from Kings [Mr. Murphy], settle a controversy with the gentleman from Broome [Mr. Hand].

Mr. M. I. TOWNSEND — I would ask the Chairman if it would not be in order to discuss an argument which was presented against myself? Is not that pertinent to the debate?

The CHAIRMAN — The Chair leaves the gentleman to proceed in his own way, and if he is out of order the Chair will call him to order.

Mr. M. I. TOWNSEND — The question under discussion is the question, as I understand it, of the propriety of extending the right of suffrage to colored men, as well as to men that are not colored. And I hold on this question the same doctrine which I have had occasion to urge and reiterate before this committee, that men have a natural right to participate in the administration of the government under which they live; and as I was charged by the gentleman from Broome [Mr. Hand], before this committee, with an inconsistency in my views, and with holding doctrines which were (to adopt the phrase which that gentleman used literally) "absurd," I deem it proper, not wishing to trespass upon the rules laid down by the Chair, and if not deemed by the Chair out of order, to proceed to show that the argument urged against my position by the gentleman from Broome [Mr. Hand], was inconsistent with itself, in this; that whereas the gentleman from Broome [Mr. Hand] charged that this doctrine was absurd, that men had this natural right, he immediately went on to argue that I was guilty of a great moral wrong,—or that my argument was—in proposing to deny to men who were paupers, supported by the public taxes, the right of suffrage. Now, sir, if a man has not a right, I would ask how can the denial of what he claims as a right be wrong? If a man has no right to vote, how is it wrong to deny to men the privilege of voting? Can there be a wrong if there be no correlative right? If the colored man has no right to vote, how can it be wrong to deny him the right—to deny him the privilege of the elective franchise? If there be no right and wrong in regard to this matter, what guide have you but the uncertain guide of expediency? If there be no right to vote, what wrong can there be in a local Protestant majority denying the Catholic the right to vote, as was done by a majority of the citizens of this State, substantially, in the election of 1855? If there be no right, how can it be wrong for a local Catholic majority to deny the same to Protestants? If there be no right in the matter, certainly it cannot be wrong for the immense white majority of the State of New York to deny to the colored population of the State of New York the privilege of voting; and to bring the question a little nearer home, if there be no right in the question, would it be wrong for the colored population of the State of South Carolina, that outnumbers the white as two to one, to deny to the whites of the State the right and the privilege of voting? If there be no right as I have said, there can be no correlative wrong. Perhaps I am wrong in referring to any principle. Some gentlemen on this floor seem to think it was wrong to refer to the Declaration of Independence. Some gentlemen, perhaps, may think it wrong to refer to the christian scriptures; some gentlemen may think it wrong to refer to this matter here, but this question is coming home to the people of this country in a way that it has never come before. But, sir, we have got to come down upon the hard pan of

principle or we shall be afloat upon a boundless sea, without chart or rudder. The gentleman from Broome [Mr. Hand], says that it is absurd to say that a man has any natural rights, but he locates this right in society. Somebody has this right. Here is a power to be exercised. It is a power that is sought to be exercised of right. Where lies the right of government? In whom is it vested? In whom is the right of suffrage vested? Why, sir, from the day when Nimrod rode down the world rough-shod, as the mighty hunter in Asia, down to now, this doctrine has been discussed, and until the landing of the pilgrims upon our shores the doctrine was, that the right of government rested in royalty, and that came from God. That is the picture that the human race has been set to look upon for nearly six thousand years, a picture that has been held up for universal gaze and admiration, that this right rested in royalty, that the right to govern was of divine appointment, and that the individual had no right to participate in government. Shall we do, sir, as a distinguished individual in our country did, in regard to the picture of Sir Robert Peel? It is said that a distinguished individual in the United States took a finely engraved picture of Sir Robert Peel, with all its parts perfect, to an engraver, and had the head taken out and his own inserted. Shall we take this picture of oppression that has been held up to the world for six thousand years, and cut out the head of Sir Robert Peel? No; cut out the head of royalty and put in the head of society, and still hold this picture up as a terror to our children, or to the admiration of our children. Our government did not originate in that way. It was no bastard Norman tyrant that originated our government. I do not know the origin of the gentleman from Broome [Mr. Hand], but my opinion is, that if the gentleman will reflect back, he will reach the day when his blood, some portion of it at least, was sitting down in the cabin of a little ship off the shores of New England, where there was no society except our Indian brethren, who are now pretty nearly extinct, in the far West, and consulting there as to what should be the government of that people when they landed upon the shores of this country, and resolving that, as far as possible, they would be governed by the rules laid down in the Word of God, until they had time for further discussion. Suppose the gentleman from Broome [Mr. Hand] had been there; suppose that in that little cabin his fine presence had been found, and he had frowned upon them and told them that their very talk was absurd; that society had the right to regulate that government; that they had none. "You, John Robinson; you, Miles Standish; you, John Alden, it is nothing to you; you have no rights. It is society that is to govern Massachusetts and the colony of Plymouth. Society must do it. You have no right." Let me suppose another case. The people of this country ought not to be mistaken on this subject. We are a government-making people. We started, at the close of the revolution in this country, upon this experiment of government with but thirteen sovereign States; we have now thirty-seven. Every one of them has been formed—how? By society? Every one of the twenty-four has been formed by the consent of those that occupied the land where the government was to operate—every one of them, and it is too late now to talk about either the divine right of kings, the divine right of "the powers that be," the divine right of anything, except the right of man to govern himself as he shall judge best for his interest and for the interests of his country. When the hardy pioneer goes out beyond the settlements, he goes out alone; he has neither wife nor child. He plants his cabin—he is alone. Does society govern him there? He has selected a choice spot. By and by a neighbor comes, then another and another, until they have five hundred; they consult together and say it is time we had some government here, framed by common consent; we will organize ourselves. An organization is formed, and just at that time comes along the gentleman from Broome [Mr. Hand], and he says, "How are the people governed here?" The first settler says, "I have something to say about this thing; there are five hundred of us; I am one of them, and we govern ourselves. We are laying the foundation for one of those States; perhaps I am going to become a Senator in Congress by and by, as the pioneers of most of the States have done. I have something to say about this thing; I have some right here." But the gentleman from Broome says, "You have no rights, your rights rest in society." That hardy pioneer will reply to the gentleman from Broome. "I was here before society was. I have seen the day when I was the only man in this broad domain; I had rights then; I have agreed to let my neighbors have just the same rights that I have, but I was here before society was here." The pilgrim fathers were in New England before society was. That is the American principle of government. We have not done what the man did in regard to the portrait of Sir Robert Peel; we have not taken the old picture of tyranny—and oppression and cut out the name of sovereign, cut out the name of prince, cut out the doctrine of divine right of kings, and put in the divine right of society. Sir, there is a moral right, and a moral wrong; whether it be right to say it or not; whether it be reasonable or not: whether it be republican or not. What if all the writers talk about sovereignty—talk about society. In the discussion between the plain man and the philosopher, the philosopher wound up the plain man in the argument, and showed conclusively there was no such thing as motion. What did the plain man do? He just rose up and walked. And while theorists are pretending and contending here that men have no rights, we form twenty-four governments, and if that will not be enough, and the land will hold out, we will form twenty-four more, by common consent, where each man has an equal right in the formation of that government. There is no divine society; man was before society. God made man; man made society; men have made governments, and all these divine governments that oppressed the world in ancient times and modern times, were the mere work of man's hand—the work of violence. Our government does not rest upon violence. It rests upon the common consent. It is too late in the day to hold up any man as

advocating an absurd doctrine, who contends that there is such a thing as human rights; who contends that any government has no right to oppress its citizens and deprive them of the exercise of their natural rights which God has given them, unless those natural rights have been forfeited. Now, sir, in regard to the colored man in particular, because this was the necessary foundation of the discussion of that question; the gentleman from Kings [Mr. Murphy] says that the people of the State are evidently opposed to allowing the right of suffrage to colored men. Does that make any odds with our action? I do not concede the fact. We have lived a great while since 1846, and although a few who held up the doctrine of extending suffrage to colored men in 1848, have gone back, the people with whom they live have not. The people of this State have been marching forward since 1846 up to a higher standard, a purer faith upon that subject. But, sir, let me suppose a case. Should we for a moment tolerate the idea that if the vote in 1855 had been cast last fall, it would be right for us to say that men professing the Catholic faith should not be permitted to vote. Such was the verdict, as I read it, as the vote showed in 1855. No, sir, the men that held the doctrine that men had rights in 1855, and the men who hold now the doctrine that men have rights, no sooner put their hands—

Mr. E. BROOKS—Will the gentleman allow me to interrupt him for a moment? I wish to say, as having some knowledge of the vote of 1855 and of the popular sentiment of that day, that the gentleman [Mr. M. I. Townsend] is not warranted in drawing any such conclusion from that vote, and that there was never any party in this State to the best of my knowledge and belief, that ever proposed the disfranchisement of any men on account of their religious faith.

Mr. M. I. TOWNSEND—I know that that has been frequently asserted, but as far as that doctrine is concerned, I am putting myself in an attitude of that plain man I referred to some time ago, who after being convinced or convicted by a philosopher that there was no such thing as motion, set himself to walking. I participated in the struggles that day. I listened to the discussions of public speakers, and I saw what was done as far as it could be done in the State of New York. I occasionally took a look into the newspapers published in the city of New York, and I think in a paper called the New York Express, I read articles against the Catholic population of this State. If I understand the tendencies of the party holding these sentiments here in the State of New York, it was as I have described—certainly in the State of Massachusetts they went forward—

Mr. E. BROOKS—I wish to say to the gentleman [Mr. M. I. Townsend] that he is mistaken when he refers to the journal which he has named, or when he refers to what was the object of the powerful political party in the State he refers to, and that he misrepresents, unintentionally, I believe, was the doctrine of that party at that time.

Mr. M. I. TOWNSEND—I have the utmost deference for the gentleman [Mr. E. Brooks] who has just sat down. I had at that day occasion to know that gentleman, and, although we differed in

politics, I have looked on him not only as an honest statesman but as a most excellent gentleman in public and private life. Had he been alone the representative of that great party, I should take every word he utters as gospel; but, sir, he was but one man in all that body of men, and we must judge from what we saw and what we heard; and if I misrepresent, I do it from impressions which I gained at that day, and which certainly will never be effaced from my memory; and I confess now when I have seen at any time since 1855 gentlemen either in public assemblies or out of them, maintaining the Catholic faith, and struggling to exclude the colored race from the right of suffrage, I have felt a degree of wonder that they, of all men, should not be touched with a feeling for the disability that rests upon the black man. Now sir, I will continue my argument, and ask, if the vote of 1855 had been cast in 1866, would we be justified in sending down a Constitution to the people, which proposed the disfranchisement of all the men holding to the Catholic faith in the State of New York? If my doctrine be heretical it gives me an immense advantage. I have a much larger brotherhood than my friends who have different views on this subject. I look upon a man who happens to be situated a little differently from myself as my brother, as I have to, recognizing this principle, as a man possessing the same rights that I possess. I know he has the same destiny, I know that he has the same origin. Although a Protestant myself of the straightest sect, I can recognize a man of Catholic faith as my brother, entitled to all the rights I possess. Although it has happened in the providence of God, that I have inherited from some stock of my ancestors, a light complexion, I can take into brotherhood all my brethren whether they claim to be of the Caucasian race, or not, and who have a complexion a little darker than myself. They are all my brethren. They have the same rights that I have. A respected friend of mine, who was a democrat with me in 1846, and who holds to the democratic faith now—and who I see before me, said on that occasion, when he and I were brother democrats together and both voted to extend suffrage to the colored man; “I will not stand up before my God, and deny to any man a right which I claim for myself.” My friendship has been great for that man, and if I see a spot for the moment on his fair escutcheon I shall always remember what there is lying below it a substratum of principle pure and brotherly.

Mr. GERRY—Will the gentleman allow me to ask him a question? I would like to ask the gentleman, whether in regard to his African brother, he is disposed to favor the intermarriage of the races, and social equality?

Mr. M. I. TOWNSEND—I have some trouble on that subject [laughter], and for this reason: the posterity of such unions are placed in a most uncomfortable position—a most uncomfortable position. [Laughter]. I came from a State, that was proud to call its great democrat, who first held a prominent position, by the name of my friend who has just interrupted me [Mr. Gerry], and in that State, neither then nor now, have we



ever had any jealousy of the negro [laughter]; and neither his ancestors nor mine have ever felt any fear that, in a fair contest, the negro would get the advantage in the race of life! [Great laughter.] I wish to say another word to my friend [Mr. Gerry]. I said I was opposed to the mingling of the races, particularly in regard to its effect on posterity in case of the intermarriage of the races. I will say to my friend [Mr. Gerry] another thing: I am opposed to that illicit concubinage, practiced at the South by that party, to which my friend belongs, and which has scattered a black and white posterity over the Southern States, until any field of the so-called African population, looks like a race of what are called skunk-blackbirds. [Laughter.] Sir, there is no danger of the intermingling of the race by a man who respects his own blood. There are those who hold that the colored race are inferior to the white race; there are those who hold the colored race to be a sort of higher order of animals, and they are the men who mingle their blood with this same inferior race, leaving the posterity to make their way in the world as best they can since emancipation, and who before that day sold not only their own children, but the mothers who bore them. I hope the gentleman [Mr. Gerry] considers himself answered. Now, sir, I am opposed to the proposition of the gentleman from Kings [Mr. Murphy] for another reason, you cannot permanently do injustice to any people without degrading the majority which works that injustice. And as my friend [Mr. Wakeman] spoke of me the other day as the "venerable gentleman from Rensselaer," I will say I have seen something of the political action of this State, and I think I do no injustice to the campaign of 1855, when I say, I consider that campaign, and the raid upon the Catholic population of this State connected with it, as the most demoralizing political storm that has ever swept over the State of New York. It was most utterly demoralizing; and it was so because it proposed to do a wrong to the Catholic people. And how did they justify it? By charging everything that was wrong, whether true or false, upon the Catholics of this country or other countries throughout the world. It was the staple of discussion in the political mind, that those people were immoral, that they were dishonest, that they were ridden by their priests, and that under the direction of their priests they violated every obligation, social, moral, and political, until, sir, the feeling thus engendered, ripened, in Louisville, into a mob which proposed to exterminate the Catholic population, and under which the streets of St. Louis ran with blood. And, sir, I would submit it to the older Democrats of this Convention, if they believe that the moral tone of the Democrat party of the State of New York has been in any way improved by the ceaseless tirade of abuse upon the helpless negroes, that have prevailed in their political discussions since the year 1848? Has the moral tone, or the moral status of the Democratic party, been improved by it? No, sir, if we do a man a wrong, we have got to charge evil upon that man to justify us in doing it. It is an old adage, and one that should not be forgotten, that, although a man may forgive

wrongs done him, he never forgives the wrongs he does to others. So far as this matter is concerned, there is no man upon this floor, nor in this State, of white origin, who does not feel that the black man came from the hand of the same God that he did. There is not a man in society but knows the black man has not only the same origin, but the same destiny, and that it is worldly circumstances which has made their destinies to differ. If a man has looked at all into the history of the world, he knows that the light-haired Teuton, as light as himself, is the full brother of the Brahmin, with red hair, white complexion and light eyes, in the Himalaya mountains, and is the full brother of the Brahmin of South Hindostan, as black as the ace of spades. The gentleman knows that the Brahmin of South India is talking the same language as we of boasted Saxon blood are talking to-day, the Sanscrit being the mother of both tongues; or if he does not know it, he had better read up. I know that men get up theories to the contrary of this idea of human brotherhood. It is to save the necessity of these theories, that I would have this principle established. It is said that we are not of the same race—not of the same blood. Why? Because, they say, the union of the black and the white produces a diseased animal, and they soon expire. This doctrine has been a favorite doctrine. It is said they do not multiply beyond the first multiplication, and that they are short lived. That would be proclaimed in a lecture-room in New Orleans, and published in the newspapers and preached in the pulpit, and the men assenting to it walked out to the auction-block and paid two hundred dollars more for a negro half white and half black, of the age of forty for a field hand than he would for a full black and simply because he was a "diseased animal" and could not perpetuate the race. That negroes were to be of a different race, the people were convinced in that lecture room. And you would find the same man, with convictions thus strong, having a family raised by a Caucasian in a house in one street, and another family by a quadroon in another street. The doctrine now is a sort of literary doctrine at times. And yet Alexander Dumas *pere* is not more celebrated than Alexander Dumas *fils*, the father an octroon, and the son a still further substitution of colors. I believe that Fred. Douglass has not an unhealthy family. Sir, nobody believes this doctrine. It is mere pretense. I propose to talk rather freely on this subject. I want to dispel some of these illusions. A man says "I have seen a great many colored people having white blood in them who are scrofulous." Ah! you have, "and," he asks, "how could that be unless the race is unhealthy?" I will tell you how that came about. It came from the physical character and condition of the father who mixed his blood with the black woman; for until a man had run his blood and his system and moral sympathies down, he would not risk the raising of posterity by the mixing of black blood and white, and thus the mulatto has the accumulated diseases of the father. But now all things are charged, forsooth, to the colored race. What exterminated the Indians? Not the bullet; not the tomahawk; for even the settlers



used the tomahawk as well as the Indians; but some of these vile diseases that are scattered through the Indian tribes by the miserable whites who have mixed their blood with theirs. But again, sir, we are told that the physical formation of the black race is such that they cannot be identical with the white. People who advocate the restriction of the rights of the blacks feel they must give a reason for it. They feel the truth of the doctrine that I have laid down. Every man feels and knows that every other man has a natural right. They tell us there are physiologists who have discovered that there are certain physiological differences—that in the human system there is a bony substance in a particular part of the white man, where there is a cartilage in the same part of the colored man. It is not long since, to satisfy the behests of slavery that Agassiz went to Charleston to work out the doctrine which was so satisfactory to a people who had so long flourished and prospered upon the wrong they had done the black race. And yet it is found that the great naturalist made a fatal mistake that will stick to him as long as he lives. I have been betrayed into an incidental discussion on this subject more general than I intended, but do not intend to apologize for it to the committee. I feel as though it was due to the subject and due to myself. I now desire for a few moments, to call the attention of the majority of this Convention to another subject under consideration. I said in the course of my remarks, when once before on the floor, since we have been in Committee of the Whole, that I saw no moral wrong in denying the right of suffrage to the pauper who lived upon the public taxes of the State. I put it upon this ground, that the pauper who is supported by public taxation was in the tutelage and under the control of the dispenser of the taxes devoted to his support. He placed himself in an attitude where he was not a free man. Now, sir, I have no right to complain if the majority of this Convention shall differ with me on that subject, because, under my rule, we not only have in this Convention, but out of it, a most perfect right of private judgment and action. But I wish for a moment to call the attention of my friend from Broome [Mr. Hand], and the committee, to this one consideration in relation to the dispensers of relief to the out-door poor, to say nothing about those in the almshouse, as it has been stated on this floor, that in the city of New York, those persons have the power of aiding and refusing aid to not less than 15,000 at a time. I will estimate, for I have no estimate from others, that there are 5,000 in the city of Brooklyn. I will estimate, for there is no estimate by others, that there are from five to eight hundred in the city of Albany. I will estimate, upon my own knowledge, that they will amount to from three to five hundred in the city of Troy. Now sir, when the election comes I have no doubt that my friend from Broome [Mr. Hand], like a good citizen, goes out into the towns of his county, and discusses political questions, and so far as I know he has always made the people of that county or a majority of them think with him. He can give from eight hundred to a thousand or fif-

teen hundred majority in the direction in which he votes. When he gets through with the people in this county, who have voted upon their understanding and their convictions, and upon their free will, he is met by fifteen thousand votes in the city of New York which are completely under the control of the possessors of power; by five thousand in the city of Brooklyn; by from five to eight hundred in the city of Albany, and by three hundred in the city of Troy, to go no further west. I think at that time the gentleman [Mr. Hand] and his constituents would begin to come to the conclusion that it would be better to consider for a moment the strange doctrines preached by that strange man from Rensselaer, and see if there were not something in it. I wish to call the attention of the majority of this Convention to a remark which dropped from the gentleman from Kings [Mr. Barnard]. I thank him for it, and it is a text that perhaps we need not preach from; but it is a text upon which we should reflect. That gentleman, in his frankness, told us that those who were aided by the present state of things would of course resist any change in the Constitution. Did not you think so, Mr. Chairman, when the gentleman had concluded his speech yesterday? It will not be the men that control the five thousand votes, it will not be the men that control the fifteen thousand votes who are prepared to give up the powers they possess and place themselves upon a footing of equality with the rest of the State. I have used the term "majority" in this Convention. Am I right in doing so? One, perhaps, says "no." I yesterday read in a paper called the Albany Argus (which a delegate in this body has certainly something to do with, whom I see on the other side of the house), an article in which this doctrine was held, that the Democratic party were not responsible for the frauds and corruptions of the last Legislature, because the Republicans had a majority in either body. He did not stop to discuss the question whether his political friends were responsible, whether some of them had been sharing, but he very properly carried the argument out to the people, that the majority of that House were responsible for its action. When the work of this Convention shall have been done, we may run off on this hobby, or on that hobby or the other, but the people of this State will hold the majority of this Convention responsible for its action. We are not even tied up as the gentleman from Suffolk proposed to tie us up yesterday. He proposed to deprive us of certain appendages, that a certain fox was deprived of, to render the majority powerless here by a rule of the Convention, which would prevent our taking action. The responsibility of whatever is done in this assembly, rests upon the majority of this house, and if we go out to our constituents denying, halfway, to the colored man, those rights that every member of the Republican party acknowledges he possesses, and to which every member of the minority here possesses, the people of this State will hold us responsible. If we go out from here with a Constitution so framed, that the city of New York, the city of Brooklyn, the city of Albany and the city of Troy can overwhelm the independent voters of this

State by the pauper taxes of those cities, it is we who not only have got to suffer, but we are responsible. Let me call the attention of the majority of this Convention to another consideration in this connection. What is the power of the city of New York? If I read rightly in the public press, it has the power of raising twenty-two millions of dollars per annum in taxes. How are the rest of the State to stand up against it if the men who dispend these taxes use them to corrupt the voters of the State? I do not say that they would do so any sooner than they would in the western part of the State. I would not trust, in the county of St. Lawrence, that power in the hands of an overseer of the poor any more than I would in the city of New York. I don't speak of the city of New York invidiously, I speak of the city of New York because there is an aggregate of population, and an aggregate of power and of wealth in the city of New York, to which nothing else in this State can compare. I would just as soon check this power in St. Lawrence, or in Chautauqua, as I would in that city, I ask no rule to be applied to the republican portion of the State that would not apply to the city of New York.

Mr. SMITH—I trust that the amendment of the gentleman from Kings [Mr. Murphy] will not prevail. While I agree with him fully in his premises, I am compelled to dissent *in toto* from the conclusion; and on the other hand, while I am compelled to differ from my friend from Rensselaer [Mr. M. I. Townsend] in his premises, I agree with him in his conclusion. It is desirable that we place this question of the right of suffrage upon the proper basis. The question discussed here is, whether the elective franchise is a natural right, or whether it is a political right? My reading and reflection have led me to the conclusion that it is a political right and not a natural right. What is a natural right? Why, as has been said, truly, it is a right which inheres in humanity, a right which God gave man when he created him, a right which pertains to him under all circumstances and conditions. It belongs to the man, it belongs to the woman, it belongs to the child. And if we were to adopt this doctrine that it is a natural right that every man has to participate in the administration of the government, why then I see no reason why we should not bestow it upon the woman, upon the minor, upon the foreigner and upon the pauper. Perhaps we could better understand it by asking the question. What is civil government? As I understand it, sir, the very idea of civil government pre-supposes the existence of society. Society is a divine institution. Man was made by God to live in society, and civil government is the mere agent of society. It may be defined properly, I think, to be the power or instrument, by which society regulates the civil conduct of its members, and secures their rights and liberty. It is a mere instrument which they wield. It is not an end, but only a means. If this be so, then the right to participate in the administration of government, while it belongs to society, as a whole, belongs to no particular individual of that society. Society may bestow it, or withhold it, as to society shall seem proper and right. Of course it must be exercised according to the rules of jus-

tice and equality. But when we come to the question of natural right, I contend, sir, that no man in society has the natural right to participate in the administration of government. And I venture to affirm that you can find no respectable writer upon the science of civil government, who adopts the theory, that voting, or the right to participate in the government, is a natural right. Then, sir, the question arises, upon what ground shall we exclude any portion of society from participating in the administration of government? There are certain rules which we may adopt safely, although it is often difficult to determine when we ought to grant, or withhold that privilege. For instance, if any portion of society be hostile to the interests of society, then society may forbid their participating in the administration of government. If there be a class of society utterly incompetent to understand the true ends and best interests of society, then, undoubtedly, society may exclude that class from this political right. There are other grounds of exclusion which it is not necessary now to mention. But says my friend from Rensselaer [Mr. M. I. Townsend], the Declaration of Independence affirms that all men are endowed by their Creator with certain inalienable rights. I do not derive the political right of the colored man to participate in government from that clause of the declaration, but from another, which seems to have been overlooked in this discussion. There are two great truths enunciated in that instrument which, though intimately related, are distinct in their character. The first is that "all men are created equal." The second is that they are "endowed by their Creator with certain inalienable rights," "among which are life, liberty, and the pursuit of happiness." Now, sir, I do not place the political right of the colored man to vote, upon this declaration of inalienable rights, or upon a natural right; but upon the broad declaration of the equality of all men, and upon that basis it will stand, and stand firm. "All men," says the declaration "are created equal." Equal in what? Why, not equal in intellect, of course, because as described by Pollock, while there are some who "know all knowledge and all science known," there are others who "never had a dozen thoughts in all their life." Not equal in physical structure or in moral qualities, for in these particulars there are the widest differences among mankind. Not equal in social condition, for there is, in that respect, a marked difference among men. But, sir, they are equal in natural and political rights. Equal before the law. In that sense all men are equal, and for that reason I would not refuse to the colored man the right to participate in the administration of government. Why make this distinction in regard to them? Do gentlemen believe the Declaration of Independence, which declares that all men are created equal? If we believe it, and accept it, then there is no excuse and no good reason for excluding the colored man because he is a colored man, for that is the only reason that can be assigned for his exclusion. I know, sir, that a few years ago, when this question was submitted to the people, another reason may have operated upon the minds of some men. There was an

institution then existing at the South which had its influence upon the question. It was deemed expedient for political parties to secure the favor of the ruling class at the South, and in order to do so, it was thought necessary, in accordance with the spirit and practice of that institution, to degrade and oppress the colored man. But that institution has passed away. There is another state of things now. Slavery is wiped out, and the reasons which then existed for denying the right of suffrage to the colored man exist no longer. But, says my friend from Kings [Mr. Murphy], the political equality of men will lead to social equality; and by an inquiry put by another gentleman, it seems that men have before their eyes the apprehension that there will be social equality in the State. But, sir, it seems to me that the idea of equality before the law, equality in political rights, and social equality, have no connection with each other. I would inquire of the gentleman from Kings [Mr. Murphy], does he now invite into his parlor the lower and degraded classes of men who vote at every election, and others whom he seeks to enfranchise? Does he mingle on terms of social equality with them, and if not, why would he be under any necessity of mingling on terms of social equality with the colored man if he were enfranchised? The laws of social equality are regulated by principles applicable to them alone, and not by principles applicable to political equality. The gentleman also says that he fears, if they are permitted to vote, it will destroy the fair fabric of Democratic government. Is our government based upon a foundation so frail, that allowing a few colored men to vote—one in seventy-seven of the voters of the State of New York, (for that is the proportion of the colored men)—would destroy the fabric of our freedom? If so, we had better lay anew the foundations of the government. It is, sir, in brief, for these reasons, that I am opposed to the amendment of the gentleman from Kings [Mr. Murphy]. I did not rise with the view of making extended remarks at this time, upon this question, or going at length into its discussion; but it seemed to me that the right which we claim for the colored man, was placed upon an improper basis, and we shall gain nothing by placing it upon a wrong basis. It will stand firmly upon its true basis; and that basis is, in my judgment, not a natural right, but a political right. It is a right growing out of the equality of all men before the law, that equality with which God endowed them. My friend from Rensselaer [Mr. M. I. Townsend] remarks that there is no such thing as a divine right in society. He says that the little band of pilgrims in the Mayflower, formed their Constitution before society existed. Why, sir, what constitutes society? When Adam was first formed, and placed in the Garden of Eden, there was no society; there was one man; but when Eve was made, to become his companion and helpmeet, then there was society. And when the little band in the Mayflower joined together and formed the first free Constitution of this country, they acted as a society, and in that

society inhered the political power of government. It had the right to say who should participate in the administration of government. Society should not, for improper causes, exclude persons; it should not make invidious distinctions—should not deny the equality of all men, which is announced in our Declaration of Independence. My friend from Rensselaer [Mr. M. I. Townsend] also remarks that until our government was formed, the idea always prevailed, of the divine right of kings. I think if he will examine the early history of the world, especially as recorded in the Bible, he will find that he is mistaken. During the sixteen or seventeen centuries that followed the creation of man there existed the Patriarchal government. The father of a family was the civil ruler as well as the priest. Following that was the Hebrew commonwealth, and there the principal of free government was established by God himself. On Mount Sinai the Israelites entered into a covenant with God, that they would accept him as their civil ruler. They voluntarily chose God, and He remained, during the entire continuance of the Hebrew commonwealth, the civil ruler of that people. Following that was the line of kings, but they were given in judgment. They demanded a king and God sent them a king in judgment for their rebellion against him as their civil ruler. Afterward followed other despotic governments, but under the circumstances of their introduction and existence, they afford no countenance to the doctrine of the divine right of kings. The right of self government does not necessarily confer upon every member of society the right to participate in its administration. That right, I repeat, belongs to society as a whole, but not to every member of it. If we place the doctrine upon this ground, it will be upon a firm and a sound basis; but if we place it upon the ground that it is a natural right, we are meeting with difficulty at every step of our progress. We shall find other questions here to encounter before we get through. Female suffrage will be demanded on the ground of natural right. If I believed suffrage to be a natural right, I should vote to-day to grant it to women, but believing it to be a political right merely—one which society may withhold or give as it deems just and proper, I shall vote upon that matter as I find it expedient to do when the question comes up.

Mr. HAND—I feel very unwilling to intrude any matters relating to personal feelings upon this Convention, or to waste the time of these gentlemen, in correcting a matter which, I think no member of this Convention could have misunderstood, in relation to what I said the day before yesterday, but for the sake of the gentleman from Rensselaer [Mr. M. I. Townsend], I wish to correct one misapprehension. He says I called him a "monster." Well, now, this speech of his will go on to the extremity of the State where I am known, and they will think perhaps he is a "monster," if I said so, and to correct this I take it upon myself to give my opinion about the gentleman. I think the gentleman from Rensselaer [Mr. M. I. Townsend] is *not* a monster. He is not a monster physically, but a well-proportioned, fine-looking man, whose appearance here any of us would like



to have. Morally he is not a monster, I have no doubt he is conscientious. He shows it in all he says, in the spirit that actuates him when he is not over excited. Intellectually he is not a monster, I don't think he reasons very closely, but I think he reasons very conscientiously. I think he fails naturally to understand abstract principles, and to go down to the foundation of the superstructure of our government. I think the gentlemen of the Convention will agree with me, but I esteem him very highly. His history is the history of the politics of this State. It comes out in bold relief; he has been a faithful advocate of sound doctrine. He has exercised a wholesome influence over the politics of his region, and I am happy to compliment him upon the high position that he has attained. He complains that I misrepresented him, by saying that he used the word "inalienable." I did not misrepresent him. He quoted the Declaration of Independence, the words of Jefferson, and in quoting those words, he made them his own. He says Jefferson's doctrine was, that men were endowed by their Creator with certain "inalienable" rights. He made that word his own.

Mr. M. I. TOWNSEND—Will the gentleman from Broome [Mr. Hand] allow me to call his attention to the fact that the word "inalienable" as used in the Declaration of Independence, does not relate to that clause which says that governments derive their just powers from the consent of the governed. It is the other clause in it, the right to life, liberty and the pursuit of happiness.

Mr. HAND—This "life, liberty and the pursuit of happiness," includes the whole government. The right would be nonsense if it did not include that. If we have not the right to enter into a combination, and to make laws for our own security, then what is the natural right to life, liberty and happiness? What does it amount to? In using the words of Jefferson he made them his own, therefore I was right in saying he based his whole argument in favor of the natural right to vote on this doctrine of Jefferson. He repeated it in language very eloquent, very bold, very frank. It seemed to me better fitted for the stump than for a deliberative assembly like this Convention. There was much of the spread eagle about it; those things are well in their place.

The CHAIRMAN—The Chair has permitted this debate to have a wide range, and does not desire, therefore, to curtail the remarks of any gentleman in the committee that it now speaks; but if any gentleman of the committee shall rise to a point of order the Chair will endeavor to enforce the strict rules of parliamentary debate. The gentleman from Broome [Mr. Hand], will proceed.

Mr. HAND—Have I transgressed the rules in my remarks?

The CHAIRMAN—The Chair leaves that to the committee.

Mr. HAND—I simply said that certain principles brought forward in this Convention, were absurd, and among them, that the right to vote was a natural right. I refuted that doctrine laid down by the gentleman from Rensselaer [Mr. M. I. Townsend], and would be better pleased with the very eloquent speech that he has just made if he had answered the arguments by which

I supported that, but he did not touch them. It would have pleased me more. It would have shown more cool, calm thought, and close reasoning; it would have shown more conclusively to this Convention if he had really digested that subject, and was ready to grapple with its mighty problem. He asked if a pauper had no right to vote, how it could be wrong to withhold that privilege? I did not claim the right of a pauper to vote as an inalienable or natural right. I claimed it was wrong to exclude him from the right of suffrage, for the reasons that the gentleman gave—his poverty, his misfortune, incurred, as I insist, in thousands of cases, in the service of his country, in our great struggle for our national existence. Why did not the gentleman reply to this? I based it specially upon that ground, and not upon any natural right. Now, this subject has been pretty well discussed. The gentleman in my rear [Mr. Smith], spoke very well upon the subject, and I accord fully with his views; but I will, if it is not out of order, go back to the foundation of society and see where rights originate, and what is their nature. If I live in a forest or on a mountain top alone, no man would have a right to question what I should do. I might blaspheme the Almighty; I might commit any outrage whatever, for no man and no neighbor could be affected by what I should do. But let another man come near me, and claim the right to reside on the same ground where I reside, and he assumes immediately the right to question what I do, because what I do will affect him and his interests. That is the beginning of society. On that is based his right to inquire, and his right to control me in my action. Another man comes there, and another and another, and relations become complicated, and laws more complicated are necessary. At length a man comes there, and brings his wife and daughter. He claims that that wife and that daughter shall have the same rights in the community which the rest of us have. We consult together, and judge whether the public interests, the interests of us all, would be best subserved by a plan of that kind, and we decide against it. We immediately look to the interests of the whole. That, sir, is the origin of society. The moment we enter into society our natural rights are held in abeyance, and their extent depends entirely upon the interests of society, as I showed in my remarks the other day. I do not claim that the colored man shall vote on the ground of natural right; but I hold that the reason for which he is excluded is the worst of all reasons in the world. The same doctrine that gives me a right to vote gives him a right to vote. I have yet to hear (with due deference to what the gentleman from Kings [Mr. Murphy] has said, the first semblance of an argument that is worthy of the intellect of a boy ten years of age against the right of the colored man to vote. If I vote, why not let my colored brother vote? They resort to a vile prejudice—to what somebody taught twenty years ago. I hope that we have outgrown that darkness in this State, and that we have made some strides in progress during the lapse of twenty years, and that we are not to be bound to and tied to the thoughts and



doings of olden times. I hold to the right of the negro to vote, because he holds the same relation to the government that I do. The color of his skin is the merest accident in his organism, and is of no consequence; and the physiologist who, for political purposes, to build up a miserable doctrine, pretends there is any essential anatomical difference between the white man and the black man is a quack, I do not care who he is. The same book of anatomy which describes the colored man describes the white man. Look over any work which you choose, and you will see that the anatomy of the white man describes the anatomy of the black man, and that the little variations existing are no greater than you will find in inhabitants of the same race. You will find less variations between the two races than you will between the two individuals of the same race—taking extreme cases. I contend that the colored man should have the right of suffrage, because slavery has been abolished. It was the degradation which slavery brought upon the race which has hitherto prevented his enjoyment of the right of suffrage. But that is blotted out of existence. It is wicked—it has no existence in common sense—the doctrine that we should continue to exclude him. The wrongs of his race have caused that bloody war which has covered the land with graves, and sent sorrow into every household, because we persisted in this wrong. In righting this wrong, we have been obliged to send our sons and fathers to the battle-field, and the land has been filled with mourning. Now, let us go on and finish this work in the light of justice. As to the social equality growing out of political equality, I am sorry to hear any man of good sense bring that forward. If any man thinks his party is in danger, especially by any such calamity, perhaps he had better look well to it. I think that the party with which I act is in no danger. I think we should look well to our social interests. Don't these gentlemen know that social equality is not a subject of legislation, and never can be. It is a mere matter of taste, governed by every man in his social relations, subject to the supervision of no man outside of his own household. The addressing of such arguments to gentlemen of the character of those who compose this Convention, it seems to me, is a pretty small business. At the south where the gentleman's party has had predominance for a great many years, they are not so afraid of amalgamation. It is practiced there; and if we are to have amalgamation at all, let us have it legal, and not illegal in its character. The race has been whitened so gradually and so persistently and to such an extent that Henry Clay, in a speech made at Indianapolis, came very near telling the truth when he said that for two hundred years negro slavery had existed, and two hundred years hence will find it still in existence; and if causes continued to operate that were now operating, slavery would not be distinguished at all by the color of the people, for the color would all fade out. What was the cause? It was amalgamation forced upon the weaker race by the stronger, to which the weak never consents, which they never desire

when they are on an equality with the stronger. I do not propose to go into the general discussion. I should not have spoken of it at all, had it not been for the purpose of setting my friend from Rensselaer [Mr. M. I. Townsend], right. Now, perhaps I have transgressed the rules again. I was not very much excited. For if I had carried that feeling which the gentleman exhibited for two days I should have had an attack of sickness. I could not have come here under the state of feelings that did exist with my friend possibly. I made such a speech as I thought the whole subject demanded, and I thought that an erroneous doctrine had been brought forward that would be used in the discussion of other subjects. When we come to discuss the sale of intoxicating liquors you will hear it said that a man has a right to drink what he pleases. It is not the right of man to do anything except the interests of society will permit it. I have no right to do anything that will demoralize the family of my neighbor, or anything that will operate disastrously to the interests of society. You can see the uses that will be made of this doctrine of natural rights. It meets us at every turn. I wish to dispose of it upon the threshold, which I think I did pretty effectually, so effectually that the gentleman from Rensselaer [Mr. M. I. Townsend] felt it.

Mr. AXTELL—I do not propose to discuss this subject metaphysically, anatomically or pathologically; but I wish to say a few words in regard to a point that seems to have been lost sight of in this debate, and that is that it is purely a question as to whether the property qualification shall be retained in order to entitle the black man to vote. It is not a new question. We propose no new privilege to be given to the black man, but we propose simply to enlarge a privilege which the black man already has. The gentlemen of this Convention will remember that by the Constitution that was adopted in 1821, there was a property qualification required of all electors. The negroes might vote having a certain property qualification. That property qualification was stricken out by the Convention of 1846, so far as it related to white men, and retained so far as related to colored men. Now twenty years have elapsed; great events have taken place in the history of this nation, and events affecting this very question, and the question to-day is, whether we shall retain that restriction which was retained by the Convention of 1846. I for one, sir, feel that it would be an insult to the civilization of this age for us to retain it, and I cannot understand any sentiment or feeling that demands its retention, that is not connected with that spirit of contamination and debauchery of the public conscience that was upon this nation prior to the war, as the result of the violation of the very first postulate of the Declaration of Independence. It seems to me, sir, that the whole question here is this—slavery is dead. We propose to bury it decently. There are thousands in the nation, and thousands in the State who are determined to keep the beloved corpse above ground. That is about all there is of it. And as to submitting this question to the people of the State—who are the peo-

ple of the State whose opinions are to be respected? Are they not the people of intelligence and of virtue? The people who have moral instincts coinciding with the Declaration of Independence, and the spirit that has animated our nation during the last few years? I grant, sir, that if you were to submit this question as a distinct proposition to the people of this State it might possibly be defeated. And why? Because, sir, unfortunately, in connection with the principle of manhood suffrage which is imbedded in the public mind, and which will continue to be imbedded there, we cannot rule out certain criminal classes who will vote against extending the right of suffrage to the negro. That is all sir. The gamblers of the State will vote against it. All that class of persons who are notorious criminals, and who are always found at the polls, will vote against it, and I am satisfied that if the leading men of this Convention—the great leaders of the party that are here in the opposition, would but come up to this question in the spirit of generosity which has characterized the action of this Convention hitherto, the mass of them would vote for the adoption of the Constitution we shall frame, with a clause in it permitting the negro to vote on the same terms with the white man. I know many men who are to-day connected with that party and who have been connected with it in years past, who on both occasions, when the question was submitted as a separate and distinct proposition to the people, who voted for it, and who are ready to vote for it again, whether it shall be placed in the body of the Constitution or whether it shall not be placed in it—it will be placed there, however, and the people will adopt it, I believe. But, sir, as I have said, there is a class of persons who have still a prejudice, and who deny to colored men rights that they would have themselves—among this class are the men who murdered and burned negroes in the riots in New York in 1863. These are the men, who, whether trammelled or untrammelled by party and party influences, would vote against the extension of the right of suffrage to the colored man. I am in favor, sir, as a matter of justice, as a matter of expediency, of permitting them to vote, because I believe they are a virtuous people as compared with thousands of the others who vote.

Mr. E. A. BROWN—A few words, Mr Chairman, in relation to one or two questions which are now before the committee. The proposition of the gentleman from Kings [Mr. Murphy] to retain the property qualification as to colored men, it seems to me ought not to be adopted. Allusion was made by the honorable gentleman to the Constitutions that were framed by the several States immediately after the Declaration of Independence. The gentleman says, and, I suppose, says truly, that in most of those Constitutions the property qualification was included. That was the case in this State. But, sir, that property qualification applied to white men as well as to colored men, and the citizens of this State lived for forty-three years under the Constitution of 1777, that allowed all men, so far as color was concerned, equally the right to vote. The qualification that applied to the colored man applied to the white man. It took forty-three years for the politicians of this State to

discover the necessity of excluding from the right to vote, that portion of our citizens. Sir, why was that change made? Before answering that question, let me correct the honorable gentleman from Clinton [Mr. Axtell] on one point, historically. This property qualification was very much complicated in the article on that subject contained in the Constitution of 1821, and was entirely abolished by an amendment in 1826; and from 1826 to 1846, there was no property qualification applicable to the white man, though the qualification as to the colored man was retained. I ask why was this change made. Has any good reason been assigned by the gentleman [Mr. Murphy] who moves this amendment? Can any man give the reasons why a man whose color is different from ours should not have an equal right to vote with us? There must be a reason or the distinction should not be made. Sir, as to the capacity of the colored man. Is it said, and if said, is it demonstrated as true, that this class of citizens is not equally intelligent with thousands upon thousands who vote at every election? Is it not true sir, that as to their intelligence and their patriotism; they are as fit to walk up to the ballot-box as the fifteen thousand men who, it is said, must be naturalized within less than thirty days of the next election in order that they may exercise this inestimable privilege of citizenship—the elective franchise? Is it said, and if said, is it true, that that class of our people is not equally intelligent, equally moral, equally industrious, equally worthy of all the rights of citizenship with the fifteen thousand I have named, and the fifteen thousand more who are to be naturalized more than ten and less than thirty days prior to the election of 1868? The question answers itself. Is it said, and if said, is it true, that the class of colored persons who would be enfranchised by the proposed amendment of this committee, leaving out the word "white" as it was left out in 1777, and as it stood out for forty-three years, has not an average intelligence, honesty and patriotism equal to the average honesty, intelligence and patriotism of the whole of that portion of the population of this State that come up to the polls to vote in November? I say, sir, if it is so said, it is said recklessly, without due consideration, and without proof. When the nation was in peril who offered to go to the battle field? Among the traitors in this country do you find this class represented? Has the first black man yet been named who failed to pilot the poor fleeing refugees from the clutch of traitors! Did they fail to guide the armies of the Union in the path they sought to follow? Has the first black man or woman been named among the millions in this nation, during the four years of war, who has failed to be humane, failed to be patriotic or has proven to be a traitor? Sir, if they be degraded, if they have been degraded, out of respect, out of duty to the race to which they belong, I ask if this boon should not be given to them, if this right should not be restored? In other words, should not they be placed upon an equality of rights with every other class of men equally deserving? I am opposed to the proposition of

the gentleman from Kings [Mr. Murphy], to submit the question separately. Is it proposed to submit it separately, that negro suffrage may be adopted? If submitted with other propositions no more righteous, no more just, no more deserving the approbation of the people of the State, no better suited to the interests, the duties, the character, the reputation of the people of the State, it would be adopted with them. But if submitted separately, bitter prejudice, if nothing else, may be excited among a sufficient number of persons, who will be induced either to withhold their votes entirely or vote against the proposition, and they defeat negro suffrage without injury to any other question. And the object of the proposition, Mr. Chairman, to submit this question separately to the people is that it may be defeated. Why not act like full-grown men on this subject? Why not stand up and say boldly "We wish to exclude these men from the elective franchise." We do not wish to dodge the question by submitting it separately to the people, and allow the old prejudice against slavery and against the colored race to be used to defeat it. Let us settle the question here like men. This subject is as old as the government of the State. We understand it as we understand every other subject, and as well. Why not say, and say distinctly, *here*, that the proposition is unworthy to be submitted to the people, and we will withhold it; that the colored man is unworthy of a vote, and therefore we will withhold it? The proposition of the gentleman does not say that. He admits that if a negro or mulatto has by fair means or by foul, gained two hundred and fifty dollars of property, in real estate, he may vote. If he has robbed hen-roosts, stolen chickens, defrauded his neighbor or in any other way accumulated so much money or property he may vote; then his *color* does not hurt him or disqualify him. This property qualification had its merits in its day no doubt, and so far as I know it may have merits now. If it has any merits, all the people should have the benefit of it. If it be a burden, to be borne by any, *all* people should equally be subject to it as a burden. It comes back to the original question. It is a question of color simply—of an unfounded and unworthy prejudice. A few words upon another branch of the subject now before this Convention. The proposition of the Committee on the Right of Suffrage is to abolish that provision of the Constitution which requires a residence of four months in a county before a man may vote therein. That struck me as a change not called for by any particular reason, when I first heard it announced, but coupled with another proposition of the committee, I think it is a good one and should be adopted. That other proposition is to extend the time from ten days to thirty days, that a man shall be a citizen before he can exercise the right to vote. Now, sir, there was reason existing longer ago than 1846, why some course should be adopted to prevent fraudulent voting, and to prevent the bringing to the polls of illegal voters—or to state it in distinct English—to prevent illegal naturalization on the eve of an election. Ten days before an election, all the candidates are in

the field. They and their friends are intensely interested in their success, aside from party issues and the success of general tickets in each locality; and in all these localities where this class of persons congregate most, I do not say that there is an unhealthy excitement—I do not say that in all cases, there is a degree of attention given to the election that its merits do not deserve, but I do say that there are some persons, in those localities and in all localities, who feel a great interest in the success of a particular candidate and a particular party on the eve of an election, that that feeling and that interest grows in intensity up to the very day of election. The gentleman from New York [Mr. Daly], who speaks from experience on that subject, and speaks wisely, says in substance that there was complaint made, and properly made, when this naturalization was carried on up to the day of the election. He says that since then the practice has obtained of ceasing to naturalize ten days before the election. I suppose the reason for that—

Mr. VAN CAMPEN—I submit with due deference to the gentleman from Lewis [Mr. E. A. Brown] that he is not discussing the question pending before the committee.

The CHAIRMAN—In the opinion of the Chair, the gentleman from Lewis is proceeding strictly in order, as the motion is on the substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight] accepted by the gentleman from Ontario [Mr. Folger] to the clause reported by the Committee on the Right of Suffrage.

Mr. E. A. BROWN—The proposition of the gentleman from Cayuga [Mr. C. C. Dwight] is to amend the recommendation of the committee by reducing the time from thirty days to ten days, as the period to elapse before a person shall be entitled to vote after becoming a naturalized citizen; and I was endeavoring to state, in as few words as I could, why some time should intervene between the date of naturalization and of voting. The purpose is simply not to exclude any man who may be legally and honestly naturalized, the day before election from voting, but it is to prevent abuses which have sprung up, that the ten days was inserted in the Constitution as it now exists. If that period is a sufficient remedy for the evil, it is all I ask. But, sir, in the county in which I live, some of the towns have more naturalized than they have native born voters; and two or three cases have been litigated where fraudulent naturalization papers have turned up some years after they were given; in some cases, certificates of naturalization came through the clerk's office, which papers were on their face perfectly legal, and yet there was no more authority for naturalizing those persons than there was for naturalizing the Czar of Russia. In other cases, certificates of the declaration of intention had been filed in Oneida county one year before the application was made for the final papers, and they were changed so as to show two years, or the month was changed, and thus people, by no fault of their own, but through the schemes of outsiders, were enabled to cast illegal votes. I say that this was without any fault of the persons who were naturalized. It was the fault of schemers, political men outside, who had got hold of these papers, changed them, and de-



frauded, not only the men themselves, but defrauded the public. And this practice, sir, has prevailed, so far as I know, on the eve of elections, and has never been thought of or attempted thirty days before election, in any one case. The object of interposing a period of time between naturalization and voting is simply and solely to prevent these frauds and to save the naturalized citizens themselves, as well as the public generally, from the effects of those frauds. If ten days is a sufficient time, I am satisfied. From all the experience I have had, and from the fact that some of the judges of the Superior Court of New York, as is well known, had their names forged to papers last fall, I think ten days is hardly a sufficient time; for, if I recollect right, the case that I speak of, the forgery of the names of those judges, did not occur forty days, or sixty days before the election, but on the eve of the expiration of the time during which naturalization papers might properly be taken out, and the naturalized person secure a right to vote at the ensuing election. But, sir, I do not wish longer to take up the time of the Convention, but as I am at present advised, I should prefer to retain thirty days as the period, for the reason I have assigned, willing, however, to let it remain ten days, if that shall be the sense of the Convention.

Mr. MURPHY — In regard to the proposition I had the honor to submit, there have been speeches indulged in by members of the Convention, to which I will refer very briefly, though perhaps not as justly as I could wish, at this hour.

Mr. BARNARD — Will the gentleman please to give way for a moment. I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Barnard, and it was declared carried.

Whereupon the Convention rose and the President resumed the chair in Convention.

Mr. ALVORD from the Committee on the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

Mr. BELL — I move that this Convention take a recess until seven and a half o'clock this evening.

Mr. SEYMOUR — I move that the Convention do now adjourn.

The question was put on the motion of Mr. Seymour and it was declared carried.

So the Convention stood adjourned.

FRIDAY, July 12, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. W. S. SMART.

The Journal of yesterday was read by the SECRETARY and approved.

The PRESIDENT announced the appointment of Hiram T. French as door-keeper.

Mr. HAND presented the memorial of sixty inhabitants of the county of Broome, asking for

the submission of a separate clause, for the prohibition of the sale of alcoholic liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. C. E. PARKER presented the petition of Lyman Bradley and eighty-five others, citizens of Tioga county on the subject of legislative donations to charitable institutions of a sectarian character.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. T. W. DWIGHT presented a communication from Dr. Francis Lieber, covering suggestions of Ex-Governor Boutwell, of Massachusetts, on the pardoning power,

Which was referred to the Committee on the Pardoning Power.

Mr. T. W. DWIGHT also presented the petition of Rev. B. G. Paddock, of Rome, N. Y., respecting the prohibition of the sale of alcoholic drinks as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. STRATTON presented the petition of J. B. Thomas, pastor, and 36 others, members of the Pierrepont street Baptist church, Brooklyn, praying that the Legislature and municipal, county and town authorities be prohibited from donating any moneys or other property, to any church, school, college, hospital, asylum, or institution of any kind whatsoever, that shall or may be under the control, either directly or indirectly, of any sect or denomination of religionists.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. STRATTON also presented a communication from J. Percy, of Williamsburgh, Kings county, in relation to official corruption.

Which was referred to the Committee on Official Corruption.

Mr. GROSS presented a petition from citizens of New York, remonstrating against the prohibition by constitutional provisions of the sale of intoxicating liquors.

The SECRETARY proceeded to read the petition.

On motion of Mr. AXTELL the further reading was dispensed with, and the petition was referred to the Committee on Adulterated Liquors.

Mr. GREELEY presented the memorial of John T. B. Corwin and one hundred and thirty-two others, citizens of New York, praying for the separate submission of an article authorizing the Legislature to prohibit the traffic in intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. GREELEY also presented the memorial of Rev. Geo. H. Corey and one hundred others, citizens of Coxsackie, praying for the prohibition of the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Hiram T. French, who was appointed door-keeper in place of James Armstrong, appeared in the Convention, and was administered the constitutional oath of office by the President.

Mr. CORBETT presented a petition signed by Henry Ward Beecher, E. A. Studwell, and others,



citizens of Kings County, asking for suffrage for women.

Which was referred to the Committee of the Whole.

Mr. HISCOCK presented a petition from Rev. Samuel G. May, and others, citizens of Syracuse, asking for the prohibition of donations to institutions of a sectarian character.

Which was referred to the Committee on the Powers and Duties of the Legislature.

The President presented a communication from the Auditor of the Canal Department, in answer to a resolution of the Convention, passed June 26th.

Which was referred to the committee on Canals, and ordered to be printed.

Mr. FERRY, from the Committee on Contingent Expenses, submitted the following report:

Your committee to whom was referred the resolution of Mr. Tucker, asking that thirty dollars' worth of stationery be furnished to each of the reporters, etc., respectfully report that having carefully considered the subject, they have arrived at the conclusions following, to wit: That before advising an appropriation of money for the purpose asked, it is well to inquire why it should be done, and what right, if any, this Convention has to make it, and whether it is intended as a donation, or as money paid in discharge of an obligation which this body has incurred or assumed. These certainly must be pertinent inquiries, and intelligent answers thereto will determine what the action of this body should be in the premises. All will agree that this Convention should pay its honest debts, legally or equitably incurred, and if there be any such obligation in this case, we should at least be ready to acknowledge it and provide for its payment. The proper determination of this question leads into an inquiry into the relation which these reporters sustain to this Convention, by whose permission they occupy their seats upon the floor of the House. Are they its employees, or performing labor in its service? If your committee are correctly informed, said reporters have never been employed by, nor are they at work for this Convention. On the contrary, they are the agents of the press, doing service for their principals, and their only title to the seats they occupy is the license which the courtesy of this Convention has extended to them. We understand, however, that this favor has been most freely and willingly accorded because of the intimate relations existing between the press as intelligent organs of public opinion and the labors of this body, and also of the high character of these gentlemen—the agents of these organs—and their manifest influence in disseminating information among the people of the State, of the doings of this Convention.

Some have erroneously supposed that the relation of employer and employee had been created from the fact that the President of the Convention, has, under the rules appointed these reporters. But the mistake will be apparent when the reasons leading to such appointment are known and understood. The act of the Legislature under which this body assembled, made no provision whatever for reporters as a part of its working

machinery, and their employment in that capacity, to be rewarded in the manner proposed, was not contemplated, as is evident from the fact that the granting of stationery is expressly limited by the act to *members* of the Convention. When the Convention assembled, it, in various ways, well understood, made ample provision for giving publicity to its proceedings, and in doing so incurred an expense, which in the opinion of a considerable minority was inexpedient, if not wholly unauthorized, yet the fact is adverted to here simply to show that there existed no necessity in fact for the employment of reporters. In the meantime, the press throughout the State had sent agents or reporters here for their own accommodation, and in order to afford them ample facilities for prosecuting their business, and also to settle conflicting claims to the favor solicited, it became necessary to award them seats upon the floor of the House, and to determine who should be the occupants thereof—hence the rule for appointing and the consequent appointment of these fifteen reporters. These facts already demonstrate that this Convention, for its own use or convenience, did not employ and is not legally or equitably indebted to these reporters for services rendered as such. If, therefore, we owe these honorable gentlemen nothing, the bestowment of this money would be a gratuity, and it only remains to be considered whether this Convention can make a donation of this character. We will assume that no argument is required upon so simple a point, for it will hardly be claimed by any one that we have the power or the right to give away the public money. Nor is it desirable in any point of view that we should do so in this case. These gentlemen, the contemplated recipients of the proposed favor, are honorable men—too honorable to solicit, at our hands, charity, and we respect them too highly to offer it. Still, if any ambitious member of this body shall desire to signalize himself by performing an act of great generosity, we respectfully suggest that such individual will more successfully vindicate his claim to the coveted eminence by making the donation from his own pocket instead of the public treasury. For the aforesaid reasons, your committee recommend that the resolution be not adopted.

E. E. FERRY, *Chairman*.

Mr. COCHRAN from the minority of the same committee, submitted the following report:

The undersigned, one of the Committee on Contingent Expenses is unable to coincide with the majority of that committee, in regard to the propriety of allowing the reporters of the Convention, named by the President, the same stationery as is allowed to members. He has no doubt of the power of the Convention to incur that trifling expense, and to supply its own designated reporters with the usual and necessary conveniences for the performance of their duties in connection with this Convention. Neither does he doubt the justice and propriety of such action. He, therefore, recommends the adoption by the Convention of the resolution presented by Mr. Tucker, of New York, and referred to the said committee, that the reporters of the Convention be allowed the same

amount of stationery as the members thereof receive.

Respectfully submitted,  
ROBERT COCHRAN.

July 9th, 1867.

Mr. TUCKER—If it is in order I move to disagree with the report of the committee, and to adopt the original resolution. Upon that question I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. MERRITT—I ask for information whether the motion is upon the adoption of the report, or upon the motion to disagree.

The PRESIDENT—The question as stated by the Chair was on agreeing with the report of the committee.

The SECRETARY commenced calling the roll.

Mr. CONGER—This subject, as presented by this resolution, must necessarily place—

The PRESIDENT—The Chair would inform the gentleman that the Secretary has already commenced to call the roll; therefore, remarks are not now in order.

Mr. COCHRAN—Those who vote aye vote in favor of the majority report, and against the resolution.

The SECRETARY proceeded with the call of the roll, and on Mr. Corbett's name being called—

Mr. CORBETT—The committee instead of reporting on this question which was referred to them, have incorporated a stump speech into their report, besides having reflected on the action of the Convention in ordering the publication of the debates, which I think, is entirely uncalled for. With that explanation I desire to say that I vote against agreeing with the report of the committee.

The SECRETARY proceeded with the call and on Mr. Ketcham's name being called—

Mr. KETCHAM—For the same reasons stated by the gentleman from Onondaga [Mr. Corbett], I vote no.

The SECRETARY proceeded with the call, and the report was declared agreed to by the following vote:

*Ayes*.—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Armstrong, Andrews, Axtell, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Chesebro, Cooke, Conger, Comstock, Curtis, C. C. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Field, Flagler, Fowler, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Harris, Houston, Hutchins, Kernan, Kinney, Krum, Landon, Lapham, Law, A. Lawrence, M. H. Lawrence, Lee, Ludington, Magee, Masten, Mattice, McDonald, Merritt, Merwin, Miller, A. J. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Rogers, Rolfe, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Spencer, M. I. Townsend, S. Townsend, Van Campen, VanCott, Wakeman, Wickham, Williams—86.

*Noes*.—Messrs. Archer, Barnard, E. Brooks, Burrill, Cassidy, Champlain, Clinton, Cochran, Collahan, Corbett, Corning, Daly, Folger, Francis, Fullerton, Garvin, Gross, Hatch, Hardenburgh, Hiscock, Hitchman, Huntington, Ketcham, Larremore, A. R. Lawrence, Jr., Livingston, Loew, Lowrey, Merrill,

Monell, Morris, Murphy, Nelson, Opdyke, Paige, C. E. Parker, Robertson, Roy, A. D. Russell, Seymour, Schell, Schumaker, Silvester, Sherman, Stratton, Strong, Tucker, Veeder, Verplanck, Weed, Young—51.

Mr. DALY—I beg leave to say, Mr. President, that the Chief Justice of the United States being temporarily in this city, and as the rules that we have adopted make no provision for extending the courtesies of the Convention to the judges of the courts of the United States, I ask the unanimous consent of the Convention for a suspension of the rule, and offer the following resolution.

*Resolved*, That the privileges of the floor be extended to the Hon. Salmon P. Chase, Chief Justice of the United States.

The question was put upon the resolution of Mr. Daly, and it was declared adopted.

Mr. HUTCHINS—As the Hon. John T. Hoffman, Mayor of the city of New York, is temporarily in this city, for the same reasons given by the gentleman from New York [Mr. Daly], I ask the unanimous consent of the Convention to offer the following resolution:

*Resolved*, That the privileges of the floor be extended to Hon. John T. Hoffman, Mayor of the city of New York.

The question was put on the resolution of Mr. Hutchins, and it was declared adopted.

Mr. LOEW—I hold in my hand and propose to offer a resolution to inquire into the expediency of abolishing the office of the Superintendent of the Insurance Department and restoring and devolving the powers of that office on the Comptroller, or that the duties of the Superintendent of the Banking Department and the Insurance Department be united in one. I wish to say I have no special information in regard to this matter myself, but I understand from authority which any member of this body would approve, that the measure is necessary in order to secure the best interests of the people of this State. I propose that the Committee on Banking and Insurance shall inquire into the expediency of this, and if they see fit it will come before the Convention at a future time.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That it be referred to the Committee on Currency, Banking and Insurance, to inquire as to the expediency of the abolition of the office of the Superintendent of the Insurance Department, and of restoring to and devolving upon the Comptroller the duties of such superintendent—or that the duties of the Superintendent of the Banking Department and Superintendent of the Insurance Department, be united in one department.

Which was referred to the Committee on Currency, Banking and Insurance.

Mr. SHERMAN offered the following resolution:

*Resolved*, That the Standing Committee on Printing be directed to inquire into the cause of the non-reception by the Convention of the number of printed documents to which it is entitled by the rules, and to take such measures as may be necessary to correct the delinquency.

The question was put on the resolution of Mr. Sherman, and it was declared adopted.

Mr. GRAVES offered the following resolution:

**WHEREAS**, The use of money has become an instrument in the hands of the venal and ambitious to procure places of trust and responsibility, without a due regard to the qualifications and fitness of the candidate for the position; and that its almost frequent use at our annual and other elections, corrupting to the giver and receiver, demand from this Convention some action by which the evil shall be arrested; therefore,

*Resolved*, That in the opinion of the Convention, the following provision should be made a part of the Constitution:

Any person who shall pay or cause to be paid any money or other valuable thing directly or indirectly to any voter to obtain his vote for any office for which he is a candidate, on conviction shall forfeit the office to which he is elected and be disqualified and deemed unworthy to hold any office for ten years.

And laws may be passed excluding from the right of suffrage all persons who shall receive any money or other valuable thing as a reward for voting for any candidate for office, and also for punishing, by fine or imprisonment, or both, the voter who accepts or receives such money or valuable thing.

Which was referred to the Committee of the Whole.

Mr. BECKWITH offered the following resolution:

*Resolved*, That the resolution requesting the Auditor of the Canal Department to furnish copies of contracts now in force for repairs and improvements of the canals, etc., be modified so as to require, where there are a number of contracts similar in their terms and provisions, one copy only of such similar contracts, and then the respective names of such contractors, the respective dates, times of expiration, the amount of each contract, and the particular section of the canals embraced in each contract, and whether the prices agreed to be paid therefor by the existing contracts, exceed former prices paid, and the amount or percentage of such excess, if any.

Which was adopted.

The PRESIDENT presented a communication from the Comptroller in answer to a resolution of the Convention adopted June 26th in respect to the accrued interest, belonging to the school fund.

Which was referred to the Committee on the Finances of the State and ordered to be printed.

Mr. CONGER offered the following resolution:

*Resolved*, That the Secretary of this Convention be directed to furnish to the reporters who have been admitted to the courtesies of this floor, the stationery necessary for them in the discharge of their functions as reporters, and that he report the amount and value of such stationery as severally distributed by him before the close of the sittings of this Convention.

Which was referred to the Committee on Contingent Expenses.

Mr. POND—On page 109 of the Journal, there is a report of the Committee on Judiciary, concluding with a resolution, that a resolution previously introduced by myself and sent to that committee, should be sent to the Committee on the Preamble and Bill of Rights—that report was

laid on the table upon my suggestion. I now move that it be taken from the table, and that the resolution be passed upon.

Mr. MERRITT—I notice that the Chief Justice of the Supreme Court of the United States, Hon. Salmon P. Chase, is upon the floor, and I therefore move that the Convention take a recess for ten minutes, in order that we may pay our respects to him.

The question was put on the motion of Mr. Merritt, and it was declared to be carried, and the Convention took a recess for ten minutes.

After the recess,

The PRESIDENT announced the question to be on the motion of Mr. Pond, to take from the table the resolution referred to.

The question being put on the motion of Mr. Pond, it was declared to be carried.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Committee on Judiciary be discharged from the further consideration of so much of the resolution of Mr. Pond, of Saratoga, as relates to the subject of juries and their verdict, and that the same be committed to the standing Committee on the Preamble and Bill of Rights.

The question was then put on the adoption of the resolution, and it was declared adopted.

Mr. MORRIS—I observe, sir, that the Hon. John T. Hoffman, Mayor of the city of New York, is upon the floor, and I move that the Convention take a recess for ten minutes for the purpose of paying our respects to him.

The question being put on the motion, it was declared carried, and the Convention took a recess for ten minutes.

After the recess,

Mr. E. BROOKS offered the following resolution.

*Resolved*. That in the judgment of this Convention, the Legislature of this State should not pass laws local or special in their character, for any of the following objects, viz.:

“Regulating the jurisdiction and duties of justices of the peace and constables; for the punishment of crimes and misdemeanors; regulating the practice in courts of justice; providing for changing the venue in civil and criminal cases; granting divorces; changing the names of persons.

For laying out, opening and working on highways, and for the election or appointment of supervisors.

Vacating roads, town plots, streets, alleys and public squares.

Summoning and impaneling grand and petit juries, and providing for their compensation.

Regulating county and township business.

Regulating the election of county and township officers and their compensation.

For the assessment and collection of taxes for State, county, township or road purposes.

Providing for supporting common schools and for the preservation of school funds.

In relation to fees or salaries.

In relation to interest of money.

Providing for opening and conducting elections of State, county or township officers, and designating the places of voting.

Providing for the sale of real estate belonging



to minors or other persons laboring under legal disabilities, by executors, administrators, guardians or trustees.

In all the cases enumerated in the preceding sections, and in all other cases where a general law can be made applicable, all laws shall be general and of uniform operation throughout the State."

Mr. E. BROOKS—I beg leave to make a single remark in reference to that resolution—

Mr. FOLGER—I call the gentleman to order—as I understand it the resolution lies over.

Mr. E. BROOKS—I ask leave of the Convention to make but a single remark; but if the gentleman objects I will take my seat. The resolution is a very important one, I do not propose action upon it at the present time, but I wish to call the attention of the Convention to the provisions of the resolution. The Governor of the State has signed nearly one thousand bills passed by the Legislature of 1867, only two hundred and thirty of which were of a public nature, and many even of those are trivial in their character. I ask that the resolution which I have submitted be laid upon the table and be printed, and at the proper time I will call it up for consideration.

The resolution was laid on the table and ordered to be printed.

Mr. OPDYKE offered the following resolution:

*Resolved*, That it be referred to the appropriate standing committee to inquire into the expediency of inserting in the Constitution a provision in substance as follows:

"That a whole life policy of insurance with equal annual premiums, during life, for a sum not exceeding ten thousand dollars, payable at death to the wife and children of the insured, or any or either of them, may, if so originally declared in the policy, become and shall be exempt from the claims of the husband's creditors.

Which was referred to the Committee on the Powers and Duties of the Legislature.

The Convention then resolved itself into the Committee of the Whole, on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the chair.

Mr. GREELEY—I ask the unanimous consent of the Convention to correct a word in the clause reported by the committee. The Convention is about to pass upon the adoption or rejection of this proposed amendment, and the correction cannot be made if the amendment goes to the Convention. I ask to insert after the word "vote," in line twenty, the words "given or," so that it will read "any money or other valuable thing to influence or reward a vote given, or to be given at such election." What I ask is simply the correction of an error that occurred by oversight, to which my attention has been called by a distinguished gentlemen.

There being no objection, the correction was made as suggested by Mr. Greeley.

Mr. MURPHY—When the committee rose yesterday I was about to make some remarks in reply to observations which had fallen from gentlemen who had spoken on the amendment which I had the honor to propose. My particular purpose was, sir, to correct an impression which seemed to be conveyed by the remarks to which I

have referred, that the amendment of itself contemplated a property qualification for the colored race. That, sir, is not the case; but quite the contrary. The object of that amendment was to submit to the people the question whether all restrictions should be removed from the colored race in regard to suffrage, and whether they might all vote, irrespective of any particular qualification different from the other race. Our province here, sir, is to amend the Constitution. The amendment proposed by the gentleman from Cayuga [Mr. C. C. Dwight] it is true, would, of itself, effect the same object as that which my amendment has in view. But to my mind it is liable to two very serious objections. It does not distinctly bring before the electors the amendment proposed, viz., that of extending the right of suffrage beyond the point to which it is now given to the black race. It does not put forward affirmatively and distinctly the proposition that the right of suffrage is, with their consent, to be extended to this disqualified race. Another objection in my mind was that it did not provide for a separate submission of the question to the people. I sought to present that question to this Convention in connection with this article, and could not do so unless I recited in the amendment the existing provision of the Constitution, to the effect that no negro could vote, unless he possessed a property qualification of two hundred and fifty dollars. It was, therefore, no proposition of mine, nor is it any proposition of mine that the property qualification should exist in regard to the negro race. I do not believe in a property qualification anywhere, for any race. If a citizen is entitled to vote by the other qualifications, I am opposed to restricting his right to vote by a property qualification, be he black or white. But, sir, I find this provision in the existing Constitution, and my object is to present distinctly to the electors of this State the question whether the elective franchise shall be extended beyond that point, so that all persons of color may be entitled to vote. Now, so far as the impression has been sought to be conveyed, whether intentionally or not, that the object of this amendment is to impose a property qualification upon negroes, I hope it is now removed and the question set at rest. The great object and purpose of my amendment are to have a separate submission of this question to the electoral body which I conceive to be proper, for various considerations. I consider it to be proper in the first place, because the only certain way of ascertaining the will of the people in that regard is by presenting to them distinctly and by itself that question. If you incorporate it in the Constitution itself and submit it in connection with all the other propositions in that instrument to one vote, you do not get a fair and honest vote upon the proposition. Men who are opposed to the Constitution for other reasons vote against this project. There may be a majority in favor of that proposition by itself, and yet not willing to concede other objectionable matters in the Constitution, who will vote against the whole instrument, and thus the extension may be lost. The amendment as proposed, by me, is the one favorable to the views of those who maintain that public sentiment is in



favor of extending this right of suffrage to this race; while in my judgment, I repeat, the proposition of the gentleman from Cayuga [Mr. C. C. Dwight] including it in the Constitution, and not presenting it as a separate amendment, it may be defeated when the will of the electoral body may really be in favor of it. Let me not be misunderstood. I am opposed personally to negroes voting, but I am now arguing the point whether this question should be separately submitted. But more than this, sir, it is peculiarly a question which should be submitted to the electoral body, because it concerns the electoral body particularly. It is whether their number should be increased and enlarged, whether the principle of the elective franchise should be changed, and this privilege extended. I may say it is the people's question of privilege, and takes precedence of all other matters in the Constitution. They should determine the material question in the Constitution, in whom the power of the government shall be vested? Society has already intrusted them with it, and they are to say whether they will enlarge it or contract it. They should have the opportunity of voting fairly upon it in order that they may vindicate, if I may so speak, their own personality. I proposed it, sir, for another reason. It follows the safe line of precedent. It is the course which was adopted in 1846, and although then a large majority of the people of the State adopted the Constitution, yet upon a separate vote they rejected this proposition. If they are of that mind yet, let them have an opportunity of saying so. If they have changed their mind, let them have an opportunity of so declaring. A contrary course from that which I have proposed, that course which incorporates the proposition in the Constitution itself, shows a want of confidence in the people — a distrust in their intelligence to vote upon this question, and looks to me very much like a fraud upon the electors in regard to the question. If, as is contended, the people of the State are in favor of extending the franchise in this way, why not let them have an opportunity of fairly and squarely saying so? I have failed to hear a single objection to this course that was satisfactory to my mind. I will not say, as the gentleman from Broome [Mr. Hand], yesterday said in regard to some arguments that were made, that there is nothing in them. They may be satisfactory to the parties who propose them, but they are not satisfactory to my mind. The honorable gentleman from Westchester [Mr. Greeley] in some remarks which he submitted yesterday on this question, or the day before, I do not recollect distinctly which, put his opposition to a separate submission upon the ground that it was confusing to the electors, that they could not discriminate between the different propositions that might be presented. Well now, sir, there is nothing in that, because we have, as I said before, the best evidence in the experience of 1846. The people, I tell the gentleman from Westchester [Mr. Greeley], are capable of determining more than one proposition at a time, and as a mass are quite as capable of voting on this matter and are as discriminating as the gentleman himself. There was another reason advanced by the honorable gentleman from Clinton [Mr. Axtell] in the

remarks which he made, and a very singular one to my mind it was, if I may be permitted to say so. "It may be lost," he said, "by a separate proposition; it may be lost by the votes of gamblers and men of that ilk," and I believe he had something to say about July rioters. I do not know what was the object of the gentleman in making these particular references—whether he wished to give the question a party direction, or make a party distinction or not; but it is quite evident, if the extension is to be voted down on a separate proposition, it must be done by at least a portion of the party to which the honorable gentleman belongs, since they hold the majority in the elections of this State. It may be possible that there are gamblers and rioters who belong to that party who may unite with others in voting it down, but I hardly think so, sir. That there are gamblers and other improper men who exercise the elective franchise is quite true, but I rather think they can be found everywhere, and in all parties, and in all societies. Not only, sir, in the remarks of the honorable gentleman from Clinton [Mr. Axtell], but in those of others who spoke yesterday, I think I see a disposition to make a party question of this. The honorable gentleman from Rensselaer [Mr. M. I. Townsend] spoke of the duty of the majority to take hold of this question, drawing the distinction between the members of this body politically, the majority and the minority. Sir, most honestly and sincerely do I deprecate any attempt to draw this question into the vortex of party politics. A political question it is, but it never has been and I trust never will be made a mere party question. These gentlemen in the same breath tell us, indeed, they taunt democrats upon this floor, and democrats not here, with having voted in 1846, and again in 1860, for the proposition to enfranchise the negro. And they tell us that those men, some of them are of the same opinion still and yet they would make this a party question. On the other hand the views of men acting in the Republican party against extending the elective franchise to negroes are quite as distinct as those views of any Democrats. It is a question which rises above party. It is a question which concerns good government, and therefore, concerns us all, one which if there be any that comes under our consideration demanding impartial examination and decision should be met honestly and fairly, and without reference to the shackles of partisanship. Over the seat on which you sit, above yon canopy, are inscribed the words of one whom the majority of this Convention delighted to honor, and whose fame and good name has become a part of the history of this Union. Did he not see in this question the objection which I alluded to yesterday, and to which the honorable gentleman from Rensselaer [Mr. M. I. Townsend] took exceptions? Let me read what Abraham Lincoln said. This was in his famous debate with Mr. Douglas, in September, 1858. He says:

"While I was at the hotel to-day, an elderly gentleman called upon me to know whether I really was in favor of producing a perfect equality between the negroes and white people. While I had not proposed to myself on this occasion to say much on that sub-

I was asked me, I have five minutes in to it. I will say then I have been, in favor of the social and political equality of the two races — that I am in favor of making voters of qualifying them to mix with white people, so that there is a fusion of the white and black races. I never forbade the two races of social and political equality as they cannot so long together there must be one inferior, and I, as in favor of having the white race."

I am entertained by large bodies of the colored people, and I am in favor of showing that by all classes of po-

I am to ask the gentleman if he is not aware that I have just read of the late speech made by him in 1858, when he had changed his

position perfectly aware that since this rebellion the condition of affairs in the South, it has become a fact that the black race is the dominant party in the South, and quite as powerful in the United States, as the party after the war. Now, sir, the Broome (Massachusetts)

the author, "and containing notes and plates, never before published," and which was printed in 1853. Mr. Jefferson says:

"It will probably be asked, why not retain and incorporate the blacks into the State, and thus save the expense of supplying, by importation of white settlers, the vacancies they will leave? Deep-rooted prejudices entertained by the whites; ten thousand recollections by the blacks of the injuries they have sustained, new provocations; the real distinctions which nature has made; and many other circumstances, will divide us into parties, and produce convulsions, which will probably never end but in the extermination of one or the other race."

He goes on to discuss the differences physically, but that does not belong immediately to this question and then proceeds:

"Comparing them by their faculties of memory, reason and imagination, it appears to me that in memory they are equal to the whites; in reason much inferior, as I think one could scarcely be found capable of tracing and comprehending the investigations of Euclid; and that in imagination they are dull, tasteless and anomalous. It would be unfair to follow them to Africa for this investigation. We will consider them here on the same stage with the whites, and where the facts are not apocryphal on which a judgment is to be formed. It will be right to make great allowances for the difference of condition, of education, of conversation, of the sphere in which they move." \* \* "Some have been liberally educated, and all have lived in countries where the arts and sciences are cultivated to a considerable degree, and have had before their eyes, samples of the best works from abroad." \* \* "They astonish you with strokes of the most sublime oratory; such as prove their reason and sentiment strong, their imagination glowing and elevated. But never yet could I find that a black had uttered a thought above the level of plain narration; never seen an elementary trait, of painting or sculpture." \* \* "The improvement of the blacks in body and mind, in the first instance of their mixture with the whites, has been observed by every one, and proves that their inferiority is not the effect merely of their condition in life."

So much for the patriarch of the Democracy, whom my friend from Rensselaer (Mr. M. L. Townsend) follows. Mr. Jefferson, the founder of Republicanism, according to my friend, sees between the races a distinction which many assert is a ground why the elective franchise should not be extended, and a difference not merely physical, but an inferiority mentally, which will not allow them to advance, as he states, beyond the power of mere narration or imitation. And, sir, we have had laid on our desks a pamphlet which has been put forward by a distinguished body of the republican party, which, however, I believe, is not in sympathy with my friend from Westchester (Mr. Greeley), called the Union League of New York (Laughter), prepared by a very distinguished philosopher, Professor to enlighten and here. I looked to see what the Union League of New York had to say on the subject of

extending the elective franchise to negroes. I found nothing there except the idea which has already been suggested by several gentlemen in debate, and with which I fully accord, that it was unjust to restrict negroes from voting merely by a property qualification — taking the ground that a property qualification, if insisted upon, was wrong, or in other words, showing the inconsistency to which I alluded yesterday of imposing a property qualification upon that race, under which any of them with property were entitled to vote, and then upon no ground of reason or right as regards their mental condition or capacity, insisting that those not so qualified were not entitled to vote. He merely makes what lawyers call a special plea. But what his real views upon the main question are, I find in his book entitled, "Political Ethics." I quote from the latest edition of the work, which I obtain in the library here. Let us see what he says about the physiological distinction between the two races.

"Yet though the distinction between man and brute has thus been distinctly drawn, comparative anatomy and physiology are establishing daily more clearly the fact, that all those beings comprehended under the vast term of human species are not only morally or individually distinguished from each other, but in a very marked way, physiologically, and as to their capacities by whole races, forming a gradual scale of superiority. The most peculiar skulls of the so-called Pre-Inca race, found in South America, are so entirely different from ours, that they alone show an essential difference of that race from ours. The Caffres, the Boushmannes (Bushmen), the Hottentots, and the poor Papous, for instance, differ so materially in their anatomy and physiologic organization, from the races which comparative anatomy as well as the history of civilization teach us by conclusive facts, to consider as superior, that we should abandon all truth, were we to deny the difference. There is probably no reflective man, who was not painfully startled when he became first acquainted with these nevertheless imperative truths. We love to treat in our theories and meditations, all men as absolutely equal, but truth is truth, however it may militate with beloved, nay, generous theories: and God is the God of truth."

Here, sir, is a writer of distinction, who is indorsed politically, who maintains very distinctly the inferiority of the negro race in capacity, the ground upon which many who oppose negro suffrage base their opposition. I have referred, sir, to these authorities not for the purpose of indorsing them before this Convention, for that is not the question before us, but for the purpose of showing that this is not a partisan question and should not be decided upon partisan grounds; that there are fixed moral convictions in the minds of many people against the extension of the elective franchise in that direction. Mr. Chairman, I have already spoken more than I had intended to, and yet I may be permitted to make a few further observations before I close. It must be borne in mind that there is a great difference between emancipating the slave, freeing him from the unjust restraint by which he was held—giving him those natural rights to which he was entitled

by God, and conferring upon him, the high privilege of participating in the government of the country. There is a difference between abolishing slavery and enfranchising the slave. Giving him his liberty undoubtedly will have a tendency to improve his condition, but it does not confer upon him capacity. He remains in that respect a member of his race still. He does not, by that act, become qualified mentally with the powers necessary to exercise this province of government. The men who have contended against this slavery of the body, those who have fought and have successfully fought for his freedom, will not, must not, and cannot confound that with his right to vote. It is true, sir, history tells us that when the Helots of Sparta were emancipated, they were admitted to the rights of citizenship; but the Helots of Sparta were white men, having a capacity by nature, equal to their former masters. They were not a distinct and different race, and we can draw no argument by analogy, from that historical circumstance. But the gentleman from Fulton [Mr. Smith], based the right of these men to vote upon the ground that they were our equals. He argues that these people are not entitled to this right by nature, that they are entitled to this privilege because God has made them equal with us. How does mere naked equality, in the sense in which it is used in the Declaration of Independence, to which he referred, confer any right or any duty upon us to enfranchise them? Are not females our equals? Are not all the other disfranchised classes our equals in the sense of that instrument? How does he escape from the dilemma in which he places himself when he denies that there is a natural right, by saying that they are entitled to it because they are our equals? The gentleman from Broome [Mr. Hand] does not exactly like that definition or that doctrine. He does not put it upon the ground of natural right, which he most satisfactorily demonstrated did not exist, nor will he accept the proposition of the gentleman from Fulton [Mr. Smith]. It is not, he says, on the ground of their equality, but it is because *he* [Mr. Hand] has a right to vote. Now, the gentleman [Mr. Hand] has a right to sit in this Convention, but how has he a right to sit in it? By the determination of the electoral body. But no other man is entitled to that seat. How is it that by the gentleman's having a right to vote the negro gets a right to vote, any more than a woman gets a right to vote? He does not change the position of things. He uses new words. He goes back to the doctrine which he repudiated himself when he puts it upon that ground, and makes it to be a natural right. He does not advance, it appears to me, one step in the argument. The reason that many persons are opposed to extending the elective franchise to the blacks is that it tends to social equality. The gentleman [Mr. Hand] hoots at the idea. When you make a political equality you produce, necessarily, a social equality, where there is anything like an equality in number, and every where in the proportion that the race bears to another in political equality or political power. If the extension of the elective franchise to blacks does not bring into this body or into our own legislative bodies and

executive chair black men, it will do so in other States where the races are more equally divided or where the blacks predominate — and with such power, all history proves, and which is especially marked in the case of the Republics of South America, social equality follow. From this co-mixture of races will follow the degradation of our manhood, that condition which is spoken of with so much feeling by gentlemen. This proposed extension of the right is opposed by others on the ground of inferiority of the race, and of their incapacity to comprehend the principles and axioms of the government, or to rise to a proper discrimination in the exercise of the elective franchise. I know it was said yesterday that there were hundreds and thousands who exercised the elective franchise who ought not. Allusion was made to those ignorant persons of the white race, who are allowed to vote. That comes in as a matter of necessity, under the general principle which we have adopted. Whatever may be the condition of that class, ignorant as they may be in regard to matters of the world, uneducated as they may be in schools and colleges, they still have the power, as far as my experience has gone, to make observation and distinguish between those who are in favor of popular liberty and those who are not. But your black man, it is said, has not the capacity. He advances to a certain stage and there stops. He is not capable of doing anything more than imitating. Now, Mr. Chairman, I refer to these points merely to show the propriety of referring this question to the electoral body, that the people may, in their original capacity, have the opportunity distinctly to vote upon this question, whether they will open this right and privilege to a class to which it is sought to be extended. I stated yesterday that if such be the sovereign will of the people of this State, I will acquiesce in that judgment most cheerfully. But let us have an intelligent decision upon the question. If such be the result, certainly, as an American citizen, I shall submit, although I may not myself agree with them, and will feel bound by their decision, for it will be the law.

Mr. CORBETT — Yesterday this question was discussed in a sort of skirmishing manner. We talked of paupers, lunatics, and idiots. The question was surrounded with a great deal of extraneous matter. The substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight], however, has somewhat cleared the atmosphere, and we are now permitted to discuss the plain proposition of manhood suffrage. The gentleman who has just taken his seat [Mr. Murphy] says that this is not a party question, that it is a question above party. Sir, it is not above my party — and if it is, I am in the wrong company. The striking out of the word "white," marks distinctly the dividing line between the two political organizations in the State of New York to-day, and perhaps, in the United States; between the men who derive their ideas and their rule of action from the past, and those who see in the future something to hope for; between the men who think that all wisdom died with the generation which preceded us, and the men who believe there

is yet wisdom with the generation of to-day. It marks the distinction between the classes of society who are regressive and those which are progressive; between the men who are clinging to the prejudices of the past, and those who would use the results of advancing civilization; between those who still get their nourishment from the dying traditions of slavery, and those who have associated their sympathies with the growing aspirations of liberty. So far as this distinction holds good, this is indeed a party question. The gentleman from Kings [Mr. Murphy] has cited to us eminent authorities to prove the negro's incompetency to exercise the elective franchise, and from one author especially, who claims that the negro intellect could never be so far developed as to enable to solve a problem in Euclid. Why, sir, if the ability to solve a problem in Euclid were to be a test of one's capacity to exercise the elective franchise judiciously, the gentleman's party would be exceedingly select. [Laughter]. Besides, the negro in America is a vast improvement on the negro in Africa. Owing to the kindness, and, I might add, the social laxity of Southern morals, he is favored with a generous infusion of Caucasian blood, and it is the representative of that element that we have in the Northern States. The gentleman has quoted from a speech delivered by Abraham Lincoln in 1858, to prove that that great and good man did not believe in the negro's capacity to vote. Why, sir, a vast gulf divides the years 1858 and 1867. Since that time the thought of the nation has made gigantic strides, and we witness on every side of us the results of a new and a better faith. Civilization has made, since that period, grand conquests, and we stand in the shadow of another and a better revelation; and before the hand of an assassin had robbed the nation of her wisest ruler he had accepted the new interpretation. Yesterday the gentleman from Kings [Mr. Murphy] expressed his regret that the State of New York should take such a position as the majority here seem disposed to sanction, for then her example would be held up to other States to influence their action. Sir, it is for that reason that I am in earnest. We desire to show to the people of the United States that the experience of the past six years has not been lost upon the men of the Empire State. We desire to show to those who are struggling for liberty in Europe, and to the victims of oppression in every land, that the heart of the great State of New York, first in power, first in glory, first in history, beats in unison with their pulsations. There is another reason for my position. I cherish a creed, and have sprung from a nationality that have felt oppression and have been the victims of prejudice. I remember the time when a great party in this State had for its watchword, "None but Americans on guard." We felt what persecution was then; and in that bitter school learning its force, my sympathies ever shall be with, and my voice shall ever plead for those who suffer from injustice and wrong. When the Native American organization dissolved, the fragments naturally aggregated with the pro-slaveryism of the country, for there the proscriptive spirit found congenial society. From abuse of the



foreigner to abuse of the negro the transition was easy and rapid. We are also told that our doctrines will lead to social equality; but of that I am not afraid. Social standing is determined by merit, and all the legislation in the world will fail to make a man a gentleman unless he possesses the qualities of a gentleman within himself, and then no amount of legislation can prevent his recognition. What is the political power which the gentleman so much dreads? the grim specter which stands before his heated imagination? Is it to come from the enfranchisement of eleven thousand negroes in the State of New York—eleven thousand amongst almost a million of white voters? I regret that the gentleman has seen fit to resort to such profitless considerations. I had hoped, sir, that in this nineteenth century there were other and better reasons for the exclusion of our colored citizens from the exercise of the elective franchise. And yet it was to be expected. Hatred for the negro for the last thirty years has been the political capital of the party of which the gentleman from Kings [Mr. Murphy] is an honored member, and it is not to be wondered at that he still desires to be consistent with the record of the past. The gentleman charges that hope of retaining political ascendancy in the nation is the motive which actuates us in seeking the enfranchisement of the negro in the south. Sir, we ask the ballot for the negro in the south, first because he is entitled to it as a freeman, and secondly, as a proper reward for his fidelity to the government in its hour of peril—for his devotion to the Republic in the day of sorest need, for springing to the help of the nation when traitors of a paler hue conspired against its very existence, and when perhaps gentlemen who now talk of his inferiority were not so faithful. He then knew enough to fight, was intelligent enough to be loyal, and after such a record I cannot question his capacity to vote. The gentleman says that suffrage does not necessarily follow citizenship. Well, sir, citizenship is incomplete without it. Suffrage is the complement of citizenship. The separation might be likened to the arch without the keystone, the temple without the capstone. Their combination is necessary to complete the unity. I am opposed to the separate submission of this question. There is no reason why the question of suffrage should be submitted separately more than any other proposed change in the organic law of the State. Besides, in my opinion, it would be an exhibition of cowardice and a compromise with the timidity of those who profess to be the friends of freedom. Some men are ever looking back to the past, and every change they regard an innovation. I have all reverence for the past, but, at the same time, a degree of respect for the present and confidence in the future. Since 1846 we have made rapid advances toward the bright star of our destiny. I had hoped that the younger and more vigorous element of the democratic party had observed the results and counseled with the ideas that triumphed in the recent glorious struggle for freedom and nationality. But it seems we must march without them. I turn to those, then, of whom better things can be said, and of them I ask unity of

purpose and firmness of faith, and that they falter not at the threshold of victory. As for me, the work of this Convention shall stand or fall with manhood suffrage.

Mr. LANDON—I am in favor of so much of the amendment of the gentleman from Kings [Mr. Murphy] as proposes a separate submission of the question of negro suffrage to the people, and I deem it, sir, proper that this statement should be made thus early in this debate, since it can only happen that the further extension of the right of suffrage to the negro can be granted by the votes of the electors of this State, and since all parties are agreed that it is best that the question should be submitted to the people in some way or other, it seems to me that the only question that is pertinent here is, how shall it be submitted? The gentleman who has just taken his seat [Mr. Corbett] says that the plan for separate submission is cowardice. I affirm, sir, that the plan of separate submission is bold, direct, and manly, and that the plan of joint submission is a plan that savors timidity and indirection. I, for one, am as much in favor of extending the ballot to the negro as any gentleman upon this floor. I am not afraid of the negro, I am not afraid of his power, of his superiority, or of his influence. I am willing to accord to him the same rights that I claim myself. No law can ennoble me by degrading him. When I have to turn to the statute-book to prove myself his superior, or to find in it a restraint upon my desire for his companionship the statute will deserve contempt, and myself no less. No, sir, let him advance as best he may in the pursuit of prosperity and happiness, protected in his liberty by the shield and the weapon which the ballot will afford him; but I am, sir, in favor of meeting this question plainly, squarely and directly. I do not wish to dodge it in any particular, but it seems to me that this plan of separate submission is just to all and prejudicial to none. Those who shall favor the Constitution which we shall submit and also negro suffrage can vote both ballots. Those opposed to both can vote both ballots. And that other, and perhaps numerous class, who shall favor the one and oppose the other, can also vote both ballots. None will be in anywise restricted in the liberty of choice; but by embracing the two in the one instrument, it will happen that the liberty of choice of a large portion of our citizens will be restricted. If I like my landlord's beef but do not like his onions, I will thank him not to mix them. All of us are well enough advised with regard to the public sentiment of this State, and in regard to this question of the further extension of negro suffrage to the people, to know that there is a wide difference of opinion in regard to it. We need not stop to inquire how that difference originated, or why it exists. Perhaps it ought not to exist. But we know the fact that it does exist among the people whom we represent, that they desire to express their opinions in regard to it; and I say that we, sir, as their representatives owe it to them, and owe it to our own manliness and directness, to give them the opportunity. And I know no good reason why the desire of the people to express themselves upon this question plainly and directly should be in any wise

restricted or suppressed. Every citizen in this State, is entitled to the same right as every other citizen, to vote upon this question as he pleases. Again, sir, by the separate submission of this question, we shall confine the party question to one issue, and shall lift the main instrument out of the domain of party politics. By this course the people of this State will be permitted to examine it, without prejudice and without restraint—"a consummation devoutly to be wished." Passing through such an examination, if it shall then happen that it meets with the approval of the people of the State, we may well hope that we have labored wisely in our efforts to revise and amend this organic law. But, whatever may be their verdict, I can conceive of no occupation more dignified or ennobling than that of the hundreds of thousands of electors of this State engaged in the examination of its proposed organic law, free from bigotry and restraint, free from party trammels and influence, with the sole object to approve of it, if it be found right, and to reject it if it be found wrong. Under such circumstances the right to vote is worth more than a kingly crown, and the citizens may well be sovereign. But I greatly fear that by this joint submission, the influence of parties, rather than the dictates of sound judgment, will be found to control the result of the vote of the people. I lay no stress, sir, upon the precedents which have been cited in the report of the minority of the committee, or by the gentleman from Kings [Mr. Murphy]. If I based my action upon these precedents, I should accuse myself of seeking a pretext to do a pre-determined thing, rather than for a reason to guide me toward the right. Precedents, sir, are the forms in which things are clothed, not the things themselves. However useful they may be to shape our action after we have determined it, they do not hit the main question; they do not aid us in determining whether we ought or not to do it. I doubt, sir, whether these precedents convince anybody. I am conscious that in the course I am now indicating for myself, I am acting at variance with the wishes of many trusted and more experienced members of this Convention, with whom it would be a pleasure for me to co-operate in this as in other matters of public policy. But, sir, if this question is to be made in any wise a party measure, then I have to say that I shall allow no considerations of party to influence my vote upon these questions of detail which are submitted to us. We cannot afford, we ought not, as a matter of duty, looking forward into that future in which it may be that our labors will long survive all our parties, and all of us, to limit our action by any mere consideration of party. No, sir, our object should rather be to frame as wise a Constitution as our best judgment can devise, and then to lift the parties up to a generous rivalry how best to perpetuate and promote the principles of which, after all, the best Constitution can only afford a meagre outline. Again, sir, I hope that we shall submit a Constitution worthy the adoption of the people of this State, a Constitution better adapted than the present one to its ever expanding, and multiplying and competing industry and interests, a Constitution better

adapted to its financial, judicial, and educational requirements, a Constitution, sir, which shall better promote, than the present one, the prosperity and happiness of the people of our State, and be more in consonance with the civilization of the age in which we live. I confess sir, that I am unwilling to hazard the whole upon this single question of extending the ballot to the negro; and I am the more unwilling because, in my judgment, the hazard is altogether unnecessary and of questionable right. I know sir, that it is supposed that those who are principally instrumental in asking the separate submission of this question, desire to frame upon it an issue which shall go down to the next election. This, sir, I can readily believe, but I do not know of any means by which we can prevent it, unless it shall be abandoned altogether, and that I for one will not consent to it. It seems to me, sir, and I believe it to be true, that if we will not allow them to make their party issue upon this separate question of suffrage, they will make it upon the joint submission of the whole instrument, and this will place them upon a higher vantage ground. The gentlemen of the majority with whom I am accustomed to act, will then have to champion not only the question of negro suffrage, but the educational, the judicial, the financial, and all other questions that our proposed Constitution may embrace, and if it shall happen, as I think it is likely to happen, that the interests of the whole party will be found to hinge upon successful fault-finders, the party may not be found to have virtue enough within itself to refrain from fault-finding. It is the easiest thing in the world to find fault; partisan interest can readily coin charges of folly, extravagance and corruption—"a breath may make them as a breath has made;" and though easily made, they may prove hard to be defended. So it may happen that the political contest which you hope to avert by smothering this fertile generator of strife—this question of negro suffrage, between the financial and judicial blankets, will thereby become intensified and aggravated instead of quieted and subdued. A little leaven sometimes leaveneth the whole lump. Let us meet this question plainly, separately and directly, and not in confusion, or mixed in any indirect way with other questions. Let us go before the whole people upon the single issue, with the same confidence in our power as in our virtue. In this age of ever recurring elections, no success which is founded upon the advantage derived from the present possession of power can be anything but short lived. If we go into the contest upon the separate question and succeed we shall gain an honorable victory, and if we fail we shall not be humiliated by the consciousness that we have deserved defeat by our timidity and indirection.

Mr. NELSON—Although the Convention has spent considerable time on this question, and although it may be impossible for me to add anything that would change a single vote that is to determine the important issues we are to settle, still it may not be a loss of time for me to review the questions as they are now presented to this Convention, and make those suggestions

which occur to my mind. We have here two plans, or two systems, so to speak. On the one hand we have a plan or system reported by the gentleman from Westchester [Mr. Greeley], as the chairman of the Committee on the Right of Suffrage, and on that report arises the question about which we disagree. In that report the chairman proposes to confer suffrage upon the colored people of the State. Perhaps I should not thus state it, but rather say that in the plan he proposes he desires to embody in the instrument itself a provision which, if the instrument is adopted, will, by such adoption, confer suffrage upon the colored men. Now, without stating how any of us, or desiring to know how any of us feel, it has occurred to me that the fairest and most just treatment of the people at large, is to let them pass upon that question independently and separately, as they may. We look back upon the action of the Convention of 1846, that framed the Constitution under which we are now living, and find they made a form of government that was satisfactory to a very large majority of the people of the State. That Constitution was adopted by a very large majority. The same Convention that framed that instrument submitted to a separate vote of the people, the question of the extension of suffrage to the colored people of the State, and the result on that question was some 140,000 majority against the proposition. I submit it to the sense of this Convention if it would have been right or just to the people of the State of New York—in view of the history of the past, in view of the action of the people upon the Constitution submitted in 1846, when the instrument itself was adopted by a large majority, and the question of conferring suffrage defeated by a large majority—to have embodied a clause in the Constitution to extend suffrage to negroes, to be passed upon with all the other provisions in the instrument? It has been suggested here by the chairman of the Committee on Suffrage [Mr. Greeley], that this Convention should have the boldness to embody this principle in the instrument as an entirety. Sir, it is ever bold to do right; it is ever bold to deal fairly with men and with communities, and when you present to the people of the State a clear abstract proposition, they, in their intelligence will decide it one way or the other. But the chairman, of the committee tells us, in undertaking to give a reason why the property qualification should be abolished, that slavery, the vital source and only possible ground of what he terms an invidious distinction, has been abolished. Sir, it is not for me to define the distinction. In my judgment, looking back to the action of the people of the State of New York, when they said, by the large vote they gave that they would not confer the right to vote upon colored men, it was in the exercise of their right of sovereignty that they so decided, and none of us should question it. But, is it true that slavery was the cause of this decision? Slavery had long before been abolished in the State of New York. It was not slavery, nor the recollection of slavery, that made the people give that decision; and it becomes us, succeeding those men who formed the instrument under which we have lived so long and so prosperously, that we should give a better reason for the action of the

people of the State than is here given. What reasons may be suggested? We look over these classes excluded from voting, and what do we find? We find young men between the ages of eighteen and twenty-one, excluded; and we find the women of our State, also, excluded from the exercise of the elective franchise. Why have these two classes been excluded? In support of extending suffrage to the negro, the chairman of the committee suggests that whites and blacks are required to render like obedience to our laws, and are punished in like measure for their violation; but I would suggest to the honorable gentleman [Mr. Greeley] that young men between the ages of eighteen and twenty-one are also bound to render obedience to the law, and are alike punished for its violation. So, also, Mr. Chairman, are the women of our State bound to render obedience to the law, and are punished for its violation. It is also suggested that whites and blacks were indiscriminately drafted. That is true. But, sir, were not our young men between the ages of eighteen and twenty-one also drafted? You go to the rolls of that army which fought so bravely for the purpose of handing down to posterity free institutions, and on those rolls you will find long lines of honorable names of young men between the ages of eighteen and twenty-one. Then go to your national cemeteries, and read the inscriptions upon your monuments, and there you will find the names of thousands and thousands of heroes whose ages were between eighteen and twenty-one. One other fact, Mr. Chairman, in following out the idea. In reading the history of the war from which we have just emerged, you will find following in march of that army for which so many millions of hearts beat with a lively interest, woman with kindness, tenderness and sympathy to bestow upon the sick and wounded. And yet, women and young men between eighteen and twenty-one are excluded from voting. Mr. Chairman, as citizens, young men, women and children owe obedience to law—

Mr. AXTELL—Will the gentleman [Mr. Nelson] give way for a moment. I should like to ask the gentleman by what principle should the people be governed in conferring the privilege of elective franchise? Should they be governed by whim or prejudice, or by some great general principle.

Mr. NELSON—I propose to reach that question by and by. If I do not answer it sufficiently to the satisfaction of my friend, before I have concluded my remarks, I will give way for him to renew his interrogatory if he should desire it. I have mentioned these matters, Mr. Chairman, not because in my judgment, the right of suffrage should be conferred upon all of these classes. I hold it to be immaterial what may be the individual opinion of members of this Convention upon this subject. Those opinions are immaterial, because whatever we do must be submitted to the action of our sovereigns, and our sovereigns are now the people of the State of New York. We used to profess, in all public documents, to derive all legal authority and power by virtue of "our sovereign lord the king," and so the old records of the State show on one page; and yet, turn over to the next page, and it



recites that the sovereign power is in the people of the State of New York. In the records of the State, but a single side of a leaf separates records with those two recitals. An individual opinion is only important so far as it carries with it power to influence electors at the polls. When my eloquent friend from Onondaga [Mr. Corbett] (if this question comes to be submitted to the people) addresses the electors of his community, he will give the reasons which he thinks should lead them to adopt it, and others will be heard in opposition to it. But to return. I was answering the question suggested by the report. It is not slavery, in my judgment, or the reasons that are named in the report of the committee on this section which caused the people in 1846 not to extend suffrage to the classes I have named. We must look for a different reason as actuating the people who cast that vote. The reason may have been, that in their judgment young men should not be allowed to vote because they had not reached that time of life to have the experience necessary to intelligently exercise the elective franchise. We all know young men between the ages of eighteen and twenty-one, numbers of them, who would cast as intelligent a vote as perhaps any of us could cast, and yet they are excluded. And in excluding women from the right to vote, it may be that the people of the State of New York—looking at her power and influence—looking at her presiding in a higher, nobler and holier sphere than party politics—the charmed circle of home said, “there let her be,” as the good women of this State, in my humble judgment desire to remain. “to rule with a power by which she has ever ruled, and keeping clear of the party strifes, squabbles and contests of political life.” Undoubtedly, women would exercise the elective franchise with intelligence; but they are excluded. Then, sir, in the light of the past, what is the reason for the various exclusions? Is it not this, that in defining the right of franchise, it is necessary to have a rule of limitation somewhere fixed. If that is so, in a written constitution, that fixed and settled line will work harshly or arbitrarily in some cases. It undoubtedly excludes some very competent and intelligent young men below the age now recognized for voting and it undoubtedly excludes some ladies who are so anxious for the elective franchise, and who astonish their sisters by telling them how terribly oppressed they are in the free State of New York. But, sir, though that is an arbitrary line, it must go somewhere. If I remember aright what is spoken of as the Constitution of England, of which the Englishman is so proud, is a Constitution that no living man has ever read. It is a Constitution not existing in writing, it is a Constitution existing in theory and made to bend to the circumstances of particular cases. But in a republic all Constitutions are written, and whenever you write a rule, in some cases, it will be arbitrary. It is now suggested, Mr. Chairman, that although in 1856, there was a large vote against extending the elective franchise to colored men, that that question should again go to the people. How should it go? Should it not go to their intelli-

gence to be carried by their vote unincumbered and unembarrassed by any other question? If they are opposed to it, as the people in 1846 were opposed to it, should they not, in the same manner, have the right to pass upon it and defeat it? Including it in the body of the instrument, you carry with it, perhaps, a financial policy to be adopted here that some men are opposed to, and you say to them who are in favor of negro suffrage, “you must take with it a financial policy to which you are opposed.” You may have a judiciary system to which many men may be opposed—a system that may fasten upon the people of the State men for life, who will have to stay there with all their own and wives’ relatives in office, and with no way existing to reach the abuse, and you say to a man in favor of negro suffrage, you must take that system though you are opposed to it, for the purpose of obtaining negro suffrage. I suggest to you, Mr. Chairman, that fairness, candor, honor and courage require a separate submission to the people, for them to determine this question separately and alone from the other questions embodied in the instrument that we shall frame. I do not know but what the rule applies in Committee of the Whole that has been spoken of, but there are some suggestions in this report that I desire to call attention to. It is proposed by the chairman of the Committee on the Right of Suffrage to strike out all requirements as to residence in the county. I would ask if there has been any complaint made with reference to the present requirement in that respect? Has a single request made to alter it been sent to this Convention? All that is suggested by the chairman of the committee is, that that should be changed, for the reason that certain classes of mechanics, which he has named, leave the city during the summer, and thereby lose their right to vote. The answer to that is this: residence depends upon intent. If a man leaves a place with the intention of returning, under the Constitution as it now stands, he is entitled to the elective franchise without doubt or quibble. The majority of this committee also propose to require a residence of thirty days, though a man only moves from one side of the street to the other, if he thereby moves to a different election district. Is there any reason for that? One reason suggested, is, that that length of time is necessary to look into the right of persons to vote. Fix your districts so that they shall be so small that you will be able to learn the qualifications of men to vote; because the worst of all provisions in an instrument, and which will be the most offensive, will be any provision which deprives a citizen well known in his neighborhood from enjoying the right of casting his ballot, by some machinery of law. It was suggested by the chairman of the committee [Mr. Greeley], that this thirty-day requirement was necessary to do away with the anomaly of allowing persons in case of a removal, to vote a part of a ticket at an election when they would not be allowed to vote the remainder of the ticket. For instance, under our present Constitution, a man may vote the county ticket, and not be able to vote for Member of Assembly



But why should a man who has lived his whole lifetime in any particular county, as thousands have in the county where I reside, if he should move to the next farm or next town, lose his right to vote as county elector or elector of the State, as he would be if the proposition were adopted? Can any reason be suggested? But the greatest and best answer is, that the experience of the past in the State shows that no complaint is made to the present provision of the Constitution. There is one thing further. The committee, by their chairman, propose to strike out a provision that prohibits or prevents those attending colleges or schools from casting a vote at an election. Now, I can appreciate, living where I do, the effect of that provision. Have you heard, Mr. Chairman, any complaint by reason of it? Have those representing the educational interests come here to ask you to change it? The city where I live has an institution of learning, in which, sometimes, there are eighteen hundred, and sometimes as high as two thousand students. They come from all over the State, and from other States. Is there any right, justice or reason in the students of that college, or any institution of learning, stepping in and controlling our city elections? Should they be allowed to say how much money we shall raise to build a bridge, or to do this thing or that? Have they any interest in it? Not one bit. They have not asked for it. Adopt the provision, and the result will be, in places like Poughkeepsie, Albany, and others I could mention, that you would have persons who were really non-residents casting votes at elections. In conclusion, Mr. Chairman, I would suggest one thing, that perhaps the wisest course to take is to let well enough alone. Wherever you find difficulty, there step in and endeavor to amend it; but where there is no complaint let it alone. There is corruption, and there has been for years corruption of voters at the polls, and if the wisdom of this Convention can devise a plan to stop it, the people of this State will be grateful to it for having done it. The amendment proposed by one of the gentlemen, to my mind will reach that. Then is it not best to adopt the Constitution as it is with an amendment to prevent the corruption of votes, and submit, as a separate question to the opinion of the people of the State, the subject of extending suffrage to the negro for them to determine.

Mr. GOULD—I do not rise for the purpose of making a speech upon the general subject. I only wish to offer a few remarks in reply to those submitted this morning by the gentleman from Kings [Mr. Murphy], while they are fresh in my memory. In the first place, the gentleman from Kings alleged that those who are opposed to a separate submission of the question of negro suffrage to the people are opposed to it from a spirit of cowardice, because they fear the people, and have no confidence in their intelligence. I wish to deny that conclusion altogether. He stated that he had never heard a single argument from those who desired to prevent a separate submission. Sir, I will give one on this occasion, and but one. The argument is, that it is an insult to the people to give a separate submission of the subject. Sir, the question whether a negro

should vote or not was settled years ago. For almost fifty years the people of this State have decided, and that decision has been acquiesced in, that the negro was qualified to vote, and the only question is whether that ancient relic of feudalism, the property qualification, shall be annexed to that right. The whole issue is as to that one point and there is none other whatever. On that issue it is an absurdity to submit the question to the people. There are but two great parties in this State—one the Republican party and the other the Democratic party. Where will you ever find among the authentic utterances of the Republican party that they were in favor of the odious property qualification? Have they not rejected the idea in every form in which they could give it expression? Sir, I ask what have been the staple declarations of the Democratic party of this State for years? Have they not themselves declaimed against this odious property qualification? Well, sir, when the parties are one in this matter, there is nobody but what rejects a property qualification. The gentleman himself declared that it was odious to him; that he did not like it. Why, sir, insult the people by sending to them so obvious a proposition?

Mr. WEED—May I ask the gentleman from Columbia [Mr. Gould] a question. Suppose negro suffrage with all other questions are submitted in one instrument, and in that instrument is something I cannot vote for conscientiously, though I favor negro suffrage, how can I cast my vote in favor of negro suffrage, and, as the gentleman says, in unison with the universal sentiment of this State.

Mr. GOULD—I take it that the gentleman from Clinton [Mr. Weed] will cast his vote against the property qualification. He is a democrat, and as a democrat he is bound to vote against it.

Mr. WEED—The gentleman has entirely avoided the question. I certainly, as a democrat, too, shall vote for negro suffrage, if I can get a separate submission of that question, or even if put in the body of the Constitution, if the other amendments submitted meet my approval. I am and have been during my whole life in favor of negro suffrage in this State, and have so cast my vote at all times. I desire an answer to my question.

Mr. GOULD—Sir, I come to another point which I wish to speak of, and that is the matter of precedents, which the gentleman from Kings [Mr. Murphy] read to us. The people of the Southern States, who have studied the utterances of Mr. Jefferson more carefully and persistently than the people in any other section of the country, are in the habit of alleging that it is of no use to quote Mr. Jefferson on any subject whatever, for whatever you quote from him on one side is met with an antagonistic utterance by himself on the other side. And, sir, the quotation which was made by the gentleman from Kings to-day is but another illustration of that settled opinion of the southern people in regard to Mr. Jefferson. He read a statement from Jefferson's Notes on Virginia in which he said that the negro had no reasoning power whatever. Now, sir, if there is any one of undoubted negro blood who has manifested distinct rea-

soning power, if he has exhibited great intellectual acumen, that sir, settles the question forever, and shows that a want of intellect does not lie in the race. Now, sir, for twenty years Benjamin Banueker, a negro with a nose as flat as any negro was ever seen with, with lips as thick as any negro that ever walked the streets of Albany, calculated in Chester county, Pennsylvania, an almanac. He was one of those who was employed by the publishers in making the Poor Richard almanac. There was not his superior, except Dr. Rittenhouse, as a mathematician, in the United States at that time. Now, what I would ask is, whether the gentleman from Kings himself [Mr. Murphy] can compute an almanac? Can he lay on your tables to-morrow a page of an almanac calculated for the year 1967? And yet that thick-lipped, flat-nosed negro did that thing for twenty years. Sir, does that not require intellect? I would like to ask how many gentlemen in this room are competent to do what Benjamin Banueker did, and did most accurately? How many are as sufficiently conversant in the mechanical laws that are involved in the science of astronomy to do it? If the negro has a sufficient amount of intellect to do that, I think he may be intrusted with the right to vote on the question as to who shall be path-master or who shall be the constable of his village. We are told by the extracts which the gentleman from Kings [Mr. Murphy] read, that no negro had ever been known to approximate to anything like æsthetic power—that no negro had ever been able to distinguish himself in the arts. Well, sir, in the year 1847, I myself, with my own eyes, saw a negro in the State Prison at Sing Sing, who was earning for his contractor twenty dollars a day by the exercise of one of the fine arts. He was accustomed to paint window shades, which readily sold for fifty dollars a pair. They were admired by every one who saw them. There was a gracefulness in the outline, a delicacy in the blending of colors, which attracted the highest admiration of every one, and which was attested by the price at which the window-shades were sold. If you have one man who has exhibited this kind of intellect, it is sufficient to overthrow the negative testimony which the gentleman from Kings [Mr. Murphy] quoted this morning. Now with regard to the character of the race itself. It is alleged that because the negro is of a different race and different anatomical construction from the Caucasian race, therefore he is unfit to be trusted with suffrage. But, sir, I allege beyond all fear of successful contradiction, that there is no such extraordinary difference in the anatomical or physiological condition of the negro, as has been alleged here this morning. It is true sir that certain well marked and well developed instances may be found where the shin bone of the negro is different from the shin bone of the white man. But, sir, does the negro reason with his shin bone, or does he vote with his shin bone? Is that any element whatever to determine a question of this character? We are told, it is true, that their brains are different—that their skulls are flatter. Sir, you have only to go to the Geological rooms in State street in this city, and you will find a skull of one

of the ancient Caucasian race—the root from which every Caucasian race has sprung—which is flatter than the skull of any negro whatever. Go, sir, to those island mounds in the Swiss lakes which are now attracting so much attention from physiologists and you will find in those mounds characterized as the mounds of stonehenge, skulls flatter and smaller than the most advanced monkeys of this day. The truth is, that as you cultivate the mind of the individual, you enlarge the brain-case. As the race rises or progresses in intelligence, just so does the covering of the skull rise, and the argument that because the rise is not distinguished in one race, does not prove by any means that there may not be this progress. Again, sir, I assert, beyond all fear of contradiction, of the lines by which the African and Caucasian races blend into each other so regularly and gradually that no physiologist in the world is able to point out the exact difference between them. You may take the projecting jaw of a certain class of the negro race; you may take the retreating foreheads; you may take the low skull; you may take the crooked shin-bone, but in a contiguous district, you may find a negro just as much a negro, as he is, where there is a progressive improvement in these characteristics. And as you pass onward through the extent of Africa, you will find the lines are so graded into each other before you get into the limits of the Caucasian race, that no man can point out the difference. Last evening I came along the banks of the Mohawk on the railroad, and gradually as the sun sank down behind the western hills, and the light was progressively diminishing, I sat there reading my paper, and finally looked around at the landscape, and saw the moon rising up; but I could not tell the period when it ceased to be light, or when it became dark. The gradation was so very slight that it was utterly impossible for me to tell, and just so it is with regard to the race. This argument based upon their shin bones and skulls is not worth a straw when it is examined practically and carefully. If you go to Mount Caucasus, and it may be exemplified by a series of portraits, you find most admirable physical specimens of humanity, through which, if you draw a line from the exterior angle of one eye to the exterior angle of the other, the line will strike the interior angle of each eye. Mathematically parallel to that line is the line adjoining the two corners of the lips. The line of the nose is exactly perpendicular to these lines, and every element of symmetry you find in that Caucasian race is the utmost perfection. Just precisely as you recede from the foot of Mount Caucasus, just precisely do you recede in the race from that perfect symmetry of form. We may take an individual example in the extreme and reason upon that, but it will always be found to be an exceedingly unsafe guide. I want to tell a story, and then I shall have done. My eloquent friend from Onondaga [Mr. Corbett] said that no amount of legislation could make a man a gentleman unless he had the elements of the character of a gentleman within him. And so, in the same way, no amount of legislation can keep down a gentleman who has the elements of that

character within him. In 1818 I saw at my own father's table, a negro as black as the ace of spades. He was entertained there as an honored guest. He was the Ambassador from the Emperor of Hayti to the Court of Great Britain. I never saw a man of more elegant manners than there was manifested by that same gentleman. There was a grace and elegance in his deportment that were wonderful, and there was a range of information displayed in his conversation such as is rarely heard at any table. It may be, sir, that at a dinner table, my friend from Kings [Mr. Murphy], might surpass him, but if he could surpass him in all that belongs to the character of a gentleman at a dinner table, I believe he is the only man in the Convention who could do so. After that gentleman went on his mission, my father received a letter from him, and in that letter he stated that he had called upon the Hon. Richard Rush, at that time our minister at the court of St. James. He said that Mr. Rush treated him with the most distinguished consideration, that he had spoken to him in the kindest manner, and that as he was about to leave him, Mr. Rush said to him, "Sir, I would be very happy to invite you to my dinner-table to-day, but I have a number of my distinguished countrymen who will dine with me on the occasion, and you, who know so well the prejudices of race, will perhaps excuse me from giving you an invitation." "Certainly," said Mr. Sanders, "I will, for I have already been honored with an invitation to dine with the Prince Regent, with a number of distinguished ambassadors, and therefore I should be unable to accept the invitation." So much, sir, for this.

Mr. T. W. DWIGHT—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was then put on the motion of Mr. Dwight and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the Chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the qualifications to hold office, had made some progress therein, but not having gone through therewith, had requested their chairman to report that fact to the Convention, and asked leave to sit again.

The question was then put on granting leave and it was declared carried.

Mr. BELL—I move that the Convention do now take a recess until 7½ o'clock.

Mr. SILVESTER—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Silvester, and it was declared carried.

So the Convention stood adjourned.

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SATURDAY, JULY 13, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. W. S. SMART.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. BECKWITH presented the petition of Willis Mould, N. C. Boynton, and eighty-six others, citizens of Keeseville and vicinity, asking that the

Legislature, Boards of Supervisors, and other municipal corporations, be prohibited from appropriating money to schools, colleges, churches, hospitals, etc., of a purely sectarian character.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. SHERMAN presented a communication from George Curtis, of Utica, in relation to defects in the present assessment laws.

Which was referred to the Committee on Finances of the State.

Mr. GROSS presented four memorials signed by several hundred citizens of the city of New York, asking for a provision in the Constitution regulating the traffic in fermented liquors and wines, and the passage of general and uniform laws for the maintenance of public order, decency and morality throughout the State, as the sole objects lying within the province and jurisdiction of the Legislature of a free and enlightened commonwealth capable of self-government.

Which were referred to the Committee on Adulterated Liquors.

The PRESIDENT presented several memorials signed by citizens of the State of New York, asking for the submission of a separate clause prohibiting the sale of intoxicating liquors as a beverage.

Which were referred to the Committee on Adulterated Liquors.

Mr. SEAVER from the Committee on Printing, submitted the following report:

Your standing Committee on Printing would respectfully report that they have made inquiry into the cause of the non-reception by the Convention of the number of printed documents to which it is entitled by the Rules, and find that the same have been printed, and after supplying the requisite number thereof for the files of this Convention, and for the Governor, and several heads of the State Executive Departments, and after retaining the necessary number for binding under the rules, and for the exchanges ordered by this Convention, there have remained for the use of the Convention two hundred and fifty-six copies of the usual number of each document, report, and of the Journal, which have been retained by the printer, awaiting the order of this Convention as to their disposal.

These documents, reports and Journals will this day be delivered to the Sergeant-at-Arms.

J. J. SEAVER, *Chairman*.

Which report was laid on the table

Mr. SCHOONMAKER offered the following resolution; and asked unanimous consent for its immediate consideration.

*Resolved*, That the Canal Appraisers be requested to report to this Convention a list of the claims against the State still undecided, and pending before them for adjudication, specifying the general nature of the claim, and the amount as demanded by the claimant, and particularly designating such as are pending by virtue of a special statute and giving a reference to the statute.

There being no objection, the question was put on the resolution of Mr. Schoonmaker, and it was declared adopted.

Mr. GOULD—On the 28th of June last, I presented a paper to this Convention, on the unanimity



of jurors, from Prof. Lieber, and I then moved that it be printed. The motion to print does not appear upon the Journal, and when it was referred to the Committee on Printing they supposed it was sent to them by mistake. It is now in the hands of the Committee on the Preamble and Bill of Rights. There are many references sir, in that paper too out of the way, and rather uncommon sources of information, and it seems to me it is very desirable that it should be spread upon our printed Journal. I therefore move that that paper be printed.

The question was put on the motion of Mr. Gould, and it was declared carried.

The communication is in words the following:

NEW YORK, 26th JUNE, 1867.

DEAR SIR: Observing in the papers that you have proposed in the Convention to abolish the unanimity of jurors as a requisite for a verdict in civil cases, I beg leave to address to you a few remarks on a subject which has occupied my mind for many years, and which I consider of vital importance to our whole administration of justice. Long ago I gave (in my CIVIL LIBERTY and SELF GOVERNMENT) some of the reasons which induced me to disagree with those jurists and statesmen who consider unanimity a necessary and even a sacred element of our honored jury trial. Farther observation and study have not only confirmed me in my opinion, but have greatly strengthened my conviction that the unanimity principle ought to be given up, if the jury trial is to remain in harmony with the altered circumstances which result from the progress and general change of things.

The present Constitution of our State permits litigants to waive the jury, in civil cases, if they freely agree to do so. This would indicate that the adoption of verdicts by a majority of the jurors, in civil cases, would not meet with insuperable difficulty; but it seems to me even more important, and more consonant with some reasoning to abandon the unanimity principle in penal cases.

At the beginning of my "reflections," a copy of which has been laid before each member of the Convention, I stated the different causes of the failure of justice, in the present time. I ought to have added the non-agreement of jurors. It would be a useful piece of information, and an important addition to the statistics of the times, if the Convention would ascertain, through our able State statistician, the percentage of failures of trials resulting from the non-agreement of jurors, in civil, in criminal, and especially in capital cases. This failure of agreement has begun to show itself in England likewise, since the coarse means of forcing the jury to agree, by hunger, cold and darkness has been given up.

In Scotland no unanimity of the jury is required in penal trials; nor in France, Italy, Germany, nor in any country whatever, except in England and the United States; and in the English law, it has come to be gradually established in the course of legal changes, and by no means according to a principle, clearly established from the beginning. The unanimity principle has led to strange results. Not only were formerly jurors forced by physical means to agree, in a moral and intellectual point of view,

but in old times it happened that a verdict was taken from eleven jurors, if they agreed, and "the refractory juror" was committed to prison! (Guide to English Juries, 1682. I take the quotation from Forsyth, History of Trial by Jury, 1852.)

Under Henry II it was established that twelve jurors should agree in order to determine a question, but the "afforcement" of the jury meant that as long as twelve jurors did not agree, others were added to the panel until twelve out of this number, no matter how large, should agree one way or the other. This even changed occasionally. Under Edward III it was "decided" that the verdict of less than twelve was a nullity. At present a verdict from less than twelve is sometimes taken by consent of both parties. At first the jurors were the judges themselves, but in the course of time, the jury, as judges of the fact, separated from the bench as judge of the law, in the gradual developement of an *accusatorial* trial as contradistinguished to the *inquisitorial trial*. The English trial by jury is one of the great acquisitions in the developement of our race, but everything belonging to it as it exists at present, is not perfect; nor does the trial by jury form the only exception of the rule that all institutions needs must change or be modified in the course of time, if they are intended to last and outlive centuries.

The French rule, and I believe the Italian also, is, in penal as well as civil cases, that if seven jurors are against five, the judge or judges retire, and if the bench decides with the five, against the seven, the verdict is on the side of the five. If eight jurors agree against four it is a verdict, in capital as well as in criminal cases. There is no civil jury in France. This seems to me artificial, and not in harmony with our conception of the judge, who stands between the parties, especially so when the State, the crown or the people is one of the two parties; nor in harmony with the important idea (although we Americans have given it up in many cases) that the judges of the fact and those of the law must be distinctly separated.

On the other hand, what is unanimity worth, when it is enforced; or when the jury is "out" any length of time; which proves that the formal unanimity, the outward agreement is a merely *accommodative* unanimity, if I may make a word. Such a verdict is not an intrinsically truthful one; the unanimity is a real "afforcement" or artificial. Again, the unanimity principle puts it in the power of any refractory juror, possibly sympathizing more with crime than with society and right, to defeat the ends of justice by "holding out." Every one remembers cases of the plainest, and of well-proved atrocity going unpunished, because of one or two jurors resisting the others, either from positively wicked motives, or some mawkish reasons, which ought to have prevented them from going into the jury box altogether.

I ask them, why not adopt this rule: *Each jury shall consist of twelve jurors—the agreement of two-thirds of whom shall be sufficient for a verdict, in all cases, both civil and penal, except in capital cases, when three-fourths must agree to make a verdict valid. But the foreman, in rendering the verdict, shall state how many jurors have agreed.*



I have never heard or seen in print any objection to the passage above alluded to, in which I have suggested the abandoning of unanimity, than this, that people, the criminal included, would not be satisfied with a verdict, if they knew that some jurors did not agree. As to the criminal, let us leave him alone. I can assure all persons who have investigated this subject less than I have, that there are very few convicts satisfied with their verdict. The worst ones will acknowledge that they have committed crimes indeed, but never the one for which they are sentenced, or will insist upon the falsehood of a great deal of the testimony on which they are convicted.

The objection to the non-unanimity is not founded upon any psychologic ground. How much stronger is not the fact that all of us have to abide by the decision of the majority in the most delicate cases, when supreme courts decide constitutional questions, and we do not only know that there has been no unanimity in the court, but we actually receive the *opinions* of the *minority*, and their whole arguments, which always seem the better ones to many, sometimes to a large majority of the people. Ought we to abolish, then, the publication of the fact that a majority of the judges only, and not the totality of them, agreed with the decision? By no means. Daniel Webster once said in my presence that the study of the "Protests" in the house of Lords (having been published in a separate volume) was to him the most instructive reading on constitutional law and history. May we not say something similar concerning many opinions of the minority of our supreme bench?

In legislation, in politics in general, except, indeed, in diplomacy, the unanimity principle savors of barbarism, or indicates, at least, a want of development. The United States of the Netherlands would pass no law of importance, except by the unanimous consent of the States General. A single voice in the Ancient Polish Diet could veto a measure. Does not, perhaps, something of this sort apply to our jury unanimity.

Whether it be so or not, I, for one, am convinced that we ought to adopt the other rule in order to give to our verdicts the character of perfect truthfulness, and to prevent the frequent failures of finding a verdict at all.

I am, with great regard, dear sir,

Your obedient servant,

FRANCIS LIEBER.

Mr. SHERMAN offered the following resolution:

*Resolved*, That when the Convention adjourn to-day, it adjourn to meet on Monday next at 7 o'clock P. M.

The question was put on the resolution of Mr. Sherman, and it was declared adopted.

Mr. FULLER offered the following resolution:

*Resolved*, That it be referred to the committee on Corporations other than Municipal, Banking and Insurance, to inquire into the propriety of inserting a provision in the Constitution, requiring the adoption by the railroads of this State, of a pro rata tariff for carrying freights thereon, subject to regulation by the Legislature or Canal Board.

Which was referred to the Committee on Corporations other than Municipal.

Mr. BELL offered the following resolution:

*Resolved*, That pending the discussion of the report of the Committee on Suffrage, etc., in the Committee of the Whole, the Convention will hold evening sessions, commencing at 7½ o'clock.

Mr. ALVORD — I trust that the resolution of the gentleman from Jefferson [Mr. Bell] will not prevail.

The resolution giving rise to debate, was laid on the table.

The Convention then resolved itself into Committee of the Whole, in the report of the Committee on the Right of Suffrage and the Qualifications to hold Office, Mr. ALVORD, of Onondaga, in the chair.

The CHAIRMAN announced the question to be upon the substitute offered by Mr. Murphy, for the substitute offered by Mr. C. C. Dwight, for the amendment of Mr. Folger, which had, by Mr. Folger, been accepted.

Mr. T. W. DWIGHT—I did not intend to address the committee at this stage of the discussion, and would not were it not been that during the course of the debate yesterday, some remarks were made in regard to the opinions of my friend and colleague Dr. Lieber. Having, however, determined to say something in regard to those remarks, I have concluded that it would be a proper time for me to take up the whole subject under discussion and to give my views upon the present pending amendment, as well as upon the other amendments which have been offered to the original proposition of the committee on the right of suffrage. Now, sir, in order that we may come to a clear understanding of this vexed question of the right of suffrage, it seems to me it would be well to establish, if possible, certain general principles, and in the establishment of those principles to deduce, if we can, the conclusions which ought to be applied to the particular cases that we have before us. And in order to reach those general conclusions, it will be necessary, it seems to me, to go to some of those points which gentlemen have already handled during the course of this discussion, and to speak of the origin of government and society, and of the right which society has, if it has such a right, to impose limitations on the right of suffrage. Now, sir, I am one of those who believe that man is of necessity a social being, that he cannot live and develop himself—live in any proper way—outside of society, or, in other words, that society is established by the will of God. I do not feel in this way at all the pressure of some of those instances which have been cited, in which men have met together and framed a social compact, such as our pilgrim fathers, or the instance which has been cited of the few men going out into the interior of the country and associating together; because in all those cases, those individuals were in society. The pilgrim fathers were still members of the great English society which they had left, and it was one of their earliest provisions to claim the rights of English freemen. And so, sir, if men go out into this western region of which we are told, are they not there under the ægis of the great society of the United States, and if they are attacked by Indians

or other persons who are outlaws to those laws of the United States, do they not at once claim protection? They are members of society still, sir, and therefore I do not feel the pressure of those cases at all. And sir, I hold that men outside of society, though they may have rights, if you please to call them so, have no remedy, and what is a right without a remedy? What would be all our absolute rights as we call them, outside of society? Take the right of personal security. How does a man protect himself outside of society? What would be the right of reputation, that most priceless right, outside of society? How could a man defend himself when attacked? So, sir, I believe that for the necessary development of man, society is essential, and therefore it is an essential institution, and consequently when once established, it has a right to perpetuate its existence; to perpetuate and develop itself; to establish for the purpose of development, large libraries, educational institutions, and other means for carrying men forward in the progress of civilization. This same right which society has to perpetuate itself, to my mind limits and controls the right which we have before us in discussion at this time. Here we are, living under a representative government, one of the last and best devices of human thought to govern men. Still, it is a device of man and not a gift of nature. With this government we seek to perpetuate and carry on society, and we find in looking around society, a mass of persons who are to be governed, and who also seek to participate in the government. Now, sir, I desire to ascertain a principle by which we shall discover who of those persons shall participate in the government and who shall be excluded from it. What is that principle? The same one which I have already indicated, that, if the participation of these men will tend to perpetuate and uphold and carry forward society, then they ought to participate in it; but, on the other hand, if their participation will tend to subvert, and destroy, and overthrow society, then they ought not to participate in it, and I cannot find any other principle on which to rest the right of suffrage. Everything else is arbitrary, and everything else is without rule. This is with rule, and can properly be applied. If we proceed still further in the elucidation of this subject, we will find there are two classes of persons who, on this theory, can be excluded. The first class is those who have personal incapacities, and the second class those who, having no personal incapacities, would by their action in a particular case tend to arrest the progress of the government, or perhaps to subvert it. In regard to that second class, I do not intend to speak. I will simply allude to them. They are such men as the Jacobites of England, for example, to whom it was proper to submit the oath of allegiance in order to determine whether they would or would not subvert the government. There was no allegation of incapacity in such cases, but simply that having the capacity they would not properly use it, so I shall dismiss these for the present from my consideration. I now come to the other class, which bears upon our pres-

ent discussion. Who are the persons who from incapacity ought to be excluded from the exercise of the right of suffrage? As far as I can ascertain, they may be classified into five classes. That is, in other words, men ought to have five requisites or qualifications to enable them to participate in the elective franchise. What are they? First, intelligence—sufficient intelligence to comprehend the structure of the government and properly to vote. Second, independence. Third, integrity. Fourth, interest. Fifth, incorporation into the mass of society. Sir, I will elucidate those particular cases, and I think that I can show that those are proper pre-requisites. First, in respect to intelligence, we have a class here that we exclude for that reason. Infants, persons not able to comprehend the government, idiots, if you please, lunatics and persons of such a low degree of intelligence that they cannot properly exercise the right of franchise. Second, dependence. Whom can we exclude on that ground? Persons who are so dependent on others that they cannot exercise this right properly. Such persons, if you please, as paupers, although I will say nothing in regard to them at this stage of the discussion, but merely suppose they belong to that class. Third, integrity. Whom do we exclude on that ground? Men who have committed crimes, and who have been convicted of them. Fourth, interest. Whom do we exclude on that ground? Men for example, who have a wager on the result of election, and who therefore may be supposed to be more interested in the wager than they are in the result of the election. Fifth, incorporation into the mass of society. Whom do we exclude on that ground? Men who have not yet been long enough with us to become one with us. They are in the society but not of it. Such persons as aliens and others—citizens of others States, if you please, but not yet long enough in the government to participate properly in the franchise. Sir, if there are any other classes than these, I would like to know it. If any man can give a principle for excluding on the ground of individual incapacity, for any other reason except want of intelligence, want of independence, want of integrity, want of interest, and the failure to be incorporated in the mass of society, I would like to know it. Sir, it seems to me that we may divide all the inhabitants of the country or of the State into two great classes—active and passive. The active inhabitants are those who have these qualifications, who have the suffrage, and who hold offices. The passive are those who have them not. So that the elective franchise must of necessity be exercised by a portion of the population. There never was a case in which the suffrage was universal, and there never can be because the application of these rules will exclude a certain class of persons from the exercise of the franchise. If we attempt to act on any other principle, if we attempt to exclude men because they are not of the same height with ourselves, because they are not dressed as we are, because they do not have the same origin, or because they do not have the same color—then, sir, instead of settling this doctrine of franchise on principle, we settle it on a

more arbitrary rule; and society never will permit in the long run, any such question, to be settled on an arbitrary rule. It will insist that we shall come around to a principle in time, if we are not already there, and that, sir, explains the convulsions and excitements in society on such questions, because instead of seeking to settle them upon principle, we seek to settle them by an arbitrary rule. Now sir, having laid down in a brief way these general principles which seem to me to be impregnable, but which might be much more fully developed than I have attempted to do, we may apply them to the particular case, and distinct question which we have now before us, that of the right of the colored man to vote. Let us apply these five rules to his case. Let us take them up in the reverse order of that in which I have given them. Can we say that the colored man is not incorporated in the mass of society? Evidently not, for he is born on the soil. He has been here as we have been. He has all the elements of citizenship, for by the common law, birth gives a man his citizenship; he is therefore incorporated into the mass of our society. Is there any want of interest on his part so that we may say, as a class, these men feel no interest in the elective franchise? Plainly not. That cannot be urged. Is there any want of integrity as a class? Clearly not. They have not been convicted as a class of any crime. Is there any want of independence? Clearly not. They are not in the almshouse. They support themselves. What then is the only ground in this analysis, if my analysis be a correct one, on which we can exclude them? On none other but the want of intelligence. Now, sir, let us meet this question, if we are to meet it at all, on that broad ground; and I will say that I much prefer the last part of the speech of the gentleman from Kings [Mr. Murphy], where he attempts to attack the ability of the negro to vote because he is of an inferior order of beings, rather than the first part where he wishes that we would present to the people of this State the question whether they would not exclude him on the ground of not having two hundred and fifty dollars' worth of real estate. In respect to intelligence, he says he believes himself, that is no ground of exclusion, though he wants us to ask the people to say whether it is or not such a ground. On that point it seems to me, that when the people sent us here to establish a constitution for them, they did not wish us to submit it on a ground that we ourselves think is radically bad. The gentleman from Kings [Mr. Murphy], says this ground is radically bad and yet he wants us to submit it to the people. Shall we submit everything that we think is radically bad to the people, simply because the people have once passed upon it in a given direction? If so, then instead of being representatives here, we are mere servants, mere slaves, without exercising our own judgment in any respect. Our own judgment dictates one thing, as he admits, and yet he wants to have another thing, contrary to our judgment, submitted. Now, sir, I wish to say a single word in respect to the property clause in the Constitution of this State. In the first place, property, as we all concede, is no ground of exclusion from the elective fran-

chise. And why is it not? Because it does not come within one of these five principles, which have been stated. It is no test of intelligence or independence, or integrity, or interest and therefore is an arbitrary thing entirely, coming within no general principle.

Mr. HALE — If the gentleman will allow me, I would like to ask, under which of the five principles of exclusion would the gentleman be justified in excluding women from the right to vote.

Mr. T. W. DWIGHT — I would say with regard to that, I have already made a general division into two great classes, one of which includes persons who may be excluded for personal incapacity, and the other is where the admission of the persons to vote would tend to subvert the constitution of society or arrest its progress. If this exclusion, the gentleman from Essex [Mr. Hale] refers to, is to be placed anywhere, it is to be placed under that class, and not under one of these five principles. Admitting the capacity, it is to be placed upon the ground, that if they were permitted to vote the tendency of it might be to prevent the development of society. Now, sir, recurring to the thread of my argument, in respect to the qualification of property, I wish to say still further that, even supposing we ought to make property a test in any case of the elective franchise, the particular form in which it exists in the New York Constitution is the worst possible form in which it could be presented, because it requires the possession of a free-hold estate of land. So that a negro may own fifty thousand dollars' worth of personal property and have no right to vote; but if he has \$250 worth of land then he has the right. And more than that, sir, it not only requires an ownership of land, but a freehold interest in the land. So that, if a negro had a lease for ninety-nine years, he could not vote. He might have the most valuable piece of land in the city of New York under a lease for ninety-nine years, yet he cannot vote unless he has a life interest in it. Thus we can see what an arbitrary distinction this is, which in effect says that a man has all the virtues who owns a tenement house for life, but who has none of them, if he holds a lease of it for ninety-nine years. The principle of the amendment is simply this, that it includes the freehold of the estate, and every lawyer who hears me will recognize that that means not only the fee of the land, but a life estate, and excludes every lease holding interest, no matter how long it may be. If we are to insult the intelligence of the people of New York by submitting to them this proposition, then I say, let us make it a little more perfect than the one we have now before us. When I was in the law school of Yale College, it was the practice and a part of the law of the State of Connecticut to require, in certain contingencies, that a man should have a freehold estate of land to the value of seven dollars a year in order to vote. The students who came to that college from various parts of the country had no land there, of course. What practice was adopted in order to enable them to vote? A well-known politician, as I have heard, though I do not vouch for its exact truth, had a large building in the city containing a number of rooms, and it was his practice on the morning of election day to convey to those students, who sympathized



with him politically, one by one, a room in this building. After the election, and when the night came, these rooms were deeded back, and so on in succession the rooms went round to the various generations of students. When the morning of election came, and the deed was given, then all the civic virtues passed to the student; he was a man of integrity and of honor, and had all the qualities necessary for the exercise of the franchise; but in the afternoon, when the deed was given back, all these virtues went away. I suppose, sir, it passed under that clause of the deed which conveys "all the rights and hereditaments thereunto belonging." That is my view, sir, of this question of the right of property. Now sir, I have come to the last part of my argument, in which I wish to pay my respects to the gentleman from Kings [Mr. Murphy]. I refer to what he said in respect to my friend and colleague, Dr. Lieber, on the broad ground that the negro is a man utterly unfit to vote because he is of an inferior organization, and in order to do him no injustice, I will read his remarks as I find them reported in the morning paper. After quoting what he did from Dr. Lieber's book, he goes on to say:

"There, sir, is a writer of distinction, and who is indorsed politically, who maintains very distinctly the inferiority of the negro race in capacity, the ground upon which many who oppose negro suffrage base their opposition to granting to the negro the right to vote."

There, sir, is the distinct assertion of the gentleman from Kings [Mr. Murphy], that Dr. Lieber, in these pages from which he quotes, had asserted the inferiority of the negro to such an extent that he ought not to have the elective franchise. I have, sir, in my hand the book from which he quoted at the time, and I find that he read about eight, ten or twelve lines on the first part of the page, but did not read the last part of the paragraph which bears distinctly upon the subject; and in order to make Dr. Lieber's opinion perfectly clear, I shall be obliged to read the whole of the passage. I will say before reading it, that what Dr. Lieber said was this, that there were certain races, such as the Pre-Inca races in South America, and the Hottentots, and Bushmen, that were inferior races, but he did not say that of the negro, but distinctly said the opposite, which the gentleman did not mention. I will now proceed to read the whole passage.

"Yet though the distinction between man and brute has thus been distinctly drawn, comparative anatomy and physiology are establishing daily more clearly the fact, that all those beings comprehended under the vast term of human species, are not only morally or individually distinguished from each other, but in a very marked way physiologically, and as to their capacities by whole races, forming a gradual scale of superiority. The most peculiar skulls of the so-called Pre-Inca race, found in South America, are so entirely different from ours, that they alone show an essential difference of that race from ours. The Caffres, the Boushomanras, (Bushmen), the Hottentots, and the poor Papous, for instance, differ so materially in their anatomy and physiologic organization, from the races which com-

parative anatomy as well as the history of civilization teaches us, by conclusive facts, to consider as superior, that we should abandon all truth, were we to deny the difference. There is probably no reflecting man, who was not painfully startled when he became first acquainted with these nevertheless imperative truths. We love to treat, in our theories and meditations, all men as absolutely equal; but truth is truth, however it may militate with beloved, nay, generous theories; and God is the God of truth."

That is where the gentleman closed his quotation. I will proceed to read you the rest of the passage.

"He must have had his all wise ends in creating these different races, as he must have had his ends in creating those many tribes and races, who without light, without expression of thought, or cultivation, have increased and vanished, or who continue to people so many parts of the globe, yet do no more than people them; tribes which live without history, that is, without progressive change, interesting to the naturalist, but of no account in the history of mankind. Nor is it for us here to speculate how far these tribes, now so low and brutish, may be susceptible of organic improvement, which, it cannot be denied, has taken place with some races. The negro of Virginia is superior, as to the formation of his head, to the negro of the more southern states, because he descends from earlier imported generations. The negro of the most southern of the United States again, has much more expression of intelligence than the newly imported negro in the West Indies. So has civilization improved the formation of the head in the Celtic race."

There sir, you will perceive distinctly what Dr. Lieber says, that such races as the Pre-Incas, the Caffres, the Bushmen, the Poor Papous, never improve, but the negro does improve, and he puts him upon the same plane with the Celtic race. Why the gentleman from Kings [Mr. Murphy] read the first part of this page, and did not read the last, I cannot say. I presume him to be an honorable gentleman, as I have heard that he is, and therefore, I suppose that he had some good reason for it—that he overlooked it. I blame him for his precipitancy, though I do not charge him with unfairness. Philosophers, sir, at the present day, take no such position as that taken by the gentleman from Kings. Have we not seen within a day or two in the newspapers a denial from Prof. Agassiz of the statement that he advanced such a doctrine—and that it was a villianous calumny? And my friend, Judge Daly, a member of this Convention, has informed me that at an interview he had with Humboldt, than whom no authority stands higher, he said to him there was no distinction either anatomically or physiologically between the negro race and our own.

Mr. M. I. TOWNSEND — Will the gentleman allow me to ask him a question. Does he understand that Prof. Agassiz denies having said at Charleston that the races were not equal.

Mr. T. W. DWIGHT — I understand so, sir, though it was a mere newspaper report; therefore I will not pledge myself for its truth.

Mr. M. I. TOWNSEND — I am very glad to hear he has got to denying it now; it is much



more creditable to him to deny it than to be making such remarks.

Mr. T. W. DWIGHT — As I believe I have fully vindicated Dr. Lieber from this charge, I would not go a single step further were it not that he has been brought before this Convention, and has submitted certain papers to us for our examination; so in addition I will say that that gentleman [Dr. Lieber] has been known for years as a most ardent and persistent anti-slavery man; and that he lost the presidency of the college of South Carolina, where he was shortly before the rebellion, because he was not supposed to be sound upon that question. He was a professor there and had every reason, as far as the surroundings were concerned, to be quiet, if nothing more, but in his books he had laid down some principles which led people to suppose he was not sound. That I have, sir, from reliable authority. During the whole progress of this rebellion there has been no man who has stood more firm on the side of those who believe that the negro is ultimately to be elevated. Having disposed of this charge, and having, as far as I can, disposed of the anatomical and physiological argument, by citations, from the authority of such men as Humboldt and the like, I have only to say one word further in respect to the general question of the intelligence of the negro. I, too, sir, in past times have had my prejudices on this subject. When this subject was last submitted to the people of this State, I voted that the negro should not vote. I, sir, in those days, was busy looking at the negro's heels to see if he had brains [laughter]. But, sir, a certain incident occurred in the course of my life which gave my thoughts another turn. I stood, two or three years ago, on the corner of Fourteenth street, by Union Square, in the city of New York, having walked up the street simply for a stroll. I came into a crowd and wondered what the assembling of the crowd could mean. Instinctively drawing back, as I do from crowds, I looked about me and I saw, a few rods further on, a body of men coming from the other side of the square, and marching down the street; as I looked a little closer, I saw a half-dozen men whom I well knew—such men as John Jay, Charles P. Kirkland and others of that stamp. Before them was a platoon of men to clear a way for the procession to march forward. I wondered what that could mean. I saw that the gentlemen named stood erect with a manly port and bearing, as though they were filled with some great thought. As I looked a little further on, I saw, coming behind them, men clad in the United States uniform, standing erect with a manly port also, and also looking as though they had some great thought to inspire them. I looked a little downwards, and as I raised my eyes and looked upwards, I saw that they were soldiers with black faces—the first of this class I had ever seen, and the first of the class, I believe, who marched down the streets of New York to go to the war. Then I cast my eyes around me, and looked further, and I saw standing on the sidewalk, the wives and children of these men, and I saw that they had the same feelings that the wives and children of other soldiers had when their husbands and fathers went to the war, of

whom I had seen many; and I saw that while the wives and children of those colored soldiers felt the deepest sympathy, yet they thought the time had come when their race should show that they were men, and thus should be enfranchised. And from that hour, sir, I have felt that the negro was a man. The hammer of conviction fell on the hard rock of prejudice, and there gushed forth from my heart a stream of sympathy, and even of affection. I am not ashamed to say that from that hour, I had an affection for the man who, when everything else was dark and gloomy, would go forth to protect me and my wife and children, and my friends and society, and above all, his country, knowing or feeling, as he did, that if there was suffering to be endured, he must endure it, that if any cruelty was to be practiced it was to be practiced upon him, for that then the cry of "no quarter" for the negro soldier was re-echoing through the South. And men who have done that for me I believe, sir, to be men. I have no doubt about it. I have no doubt of the men that I saw with such a port and bearing as those men had. There was no stolid look about them. And now I am convinced that the negro has intelligence, and that he has cultivable power within him. And if he has not intelligence enough now, we can educate him, and make him what he ought to be; hence I think that he complies with my requisition as to the qualities a man should have of intelligence, independence, patriotism and an appreciation of the duties he owes to the State and to society. There are particular instances among them where they are unfit to vote, and so there are among other classes. We cannot establish a class without having some such cases. We may establish a class above the age of twenty-one, and yet there are some who could vote intelligently under the age of twenty-one. But we must have a general rule, though it may bear hard in particular cases. Therefore, in this case, it is no argument to say that some of these men are unfit to vote, when we find that as a class they have the qualities to fit them to be enfranchised. I shall therefore dismiss that branch of the subject without further remark. I wish now to say a few words in regard to the amendment reported by the committee. I regret that I must ask for so much time, in order to fully bring out my views, but I do not expect again to trespass upon the attention of the Convention upon this point. The clause reported by the committee provides that idiots, lunatics, persons under guardianship and paupers, shall not be permitted to exercise the elective franchise. I have thought that all these persons come within the rule I have laid down. Idiots and lunatics plainly do. In fact I have heard no one say that an idiot or lunatic ought to vote, but only that it was very difficult to ascertain at the polls, whether a man was an idiot or a lunatic, or not. I think there has been some little confusion in regard to the three classes of persons which are characterized in our Revised Statutes, who are called idiots, lunatics and persons of unsound mind. The third class—persons of unsound mind—are not known to the common law. There are only two classes, so far as I know—idiots and lunatics—there referred to. Now, in order to determine who is an idiot, the rule

is very simple. A man who cannot tell his age, and do other simple acts of that kind, is known as an idiot at common law. A lunatic is a person who has departed from the natural course, and shows natural evidence of it — outward evidence — in what is called frenzy. Here we have ocular evidence as to who a lunatic is. Then there is a large class of persons who have lost their faculties by age — whose memory is impaired and who have become unfit for the management of their affairs, who would come under the other class — persons of unsound mind; so that there is practically no difficulty in telling who a lunatic or who an idiot is, because we have the outward signs. Whatever difficulty there is, applies equally in determining who is a minor or who is a male. We cannot establish any system of voting without allowing the inspectors to exercise some judgment. There is a famous case found in the law books, of a person who appeared in the habiliments of a man, but who was supposed to be a woman — the Chevalier D'Eon — and many wagers were laid in regard to his sex, in England, so much so, that it led ultimately, among other things, to the abolition of the whole law of wagers. In the case of young men it is often impossible to tell whether they are twenty-one or not, so that the inspectors must exercise a judgment. Therefore, there is no objection where the case is determined by ocular inspection, to introduce these classes into the law. If the gentleman will consult one of the early writers, Blackstone, he will find there has been from an early period of the law, a kind of trial called the trial by inspection. Though we had trial by juries, judges were to determine by ocular inspection whether a person was or was not what was alleged. This idea is only an extension of the principle of trial, by inspection, to a case of this kind. A few words in reference to persons under guardianship. I am of the opinion that it is a proper mode of characterizing persons who have been declared to be of unsound mind — that guardianship is a fit and proper word for that purpose. Mr. Willard, in his Equity Jurisprudence (and he is understood to have been skillful in this subject of lunacy), uses this word "guardianship" a number of times, in reference to persons who had a committee appointed over them. He speaks of a lunatic as a person under guardianship. The same word is used in several States of the Union, and I, therefore, believe that it is correctly used here. In regard to the class of paupers, I should not go as far as the committee in excluding them. I think no pauper should be excluded unless he has been in the public almshouse, for the reason that the law holds distinctly, that persons who are supported thus — who receive even temporary relief, are included under that name. While I think the committee is strictly accurate, I have my doubts whether in these special cases of indigence, not familiar to the people, and about which there may be some discussion, and in respect to which some odium may be cast by the report of the committee if it should be adopted there should be any exclusion. Consequently, while I judge the committee to be right, I would rather wish they would waive that branch of their report,

so that we may have a simple, plain question, whether any male person, of the proper age and other usual qualifications, may be allowed to vote.

Mr. FRANCIS — Mr. Chairman, the question before us, if I rightly understand it, is simply this: Shall a separate proposition be submitted to the people for their decision at the ensuing election as to whether a property qualification of \$250 shall be imposed upon the colored citizens of this State as a condition of their exercise of the right of suffrage? Stripped of all verbiage and extraneous accompaniments, this is the sum and substance of the amendment offered by the gentleman from Kings [Mr. Murphy]. Yet he tells us that he is opposed to a property qualification for either white or black voters, still arguing, however, in favor of submitting a proposition that embraces the principle. Why? Because, he tells us, it is sanctioned by precedent. Almost any wrong, all wrongs in fact, connected with human government, may be sustained if precedent affords a good reason for their perpetuation. Slavery itself, with the claim of divine right to justify it, might to this day have reposed in security, and been strengthened to an overpowering institution, even in the great Empire State, if precedent had been the guide of State action with reference to it. The property qualification for white voters would, on the same ground, have been upheld. Adhere to precedent, and progress is impossible. Every forward movement in government, in civilization, in all that elevates mankind and improves the world, is a divergence from precedent — a breaking away from the wrongs and abuses of the past, and the assertion of a higher power of manhood. So that, in putting forth the proposition to the people for the retention or rejection of the property qualification, on the assumption that this course is justified, if not sanctified by precedent, the gentleman pays deference to a repudiated principle of the past — a heresy which can never more obtain ascendancy among a free people — rather than recognizing the freedom of the present, or the higher hopes of the future. I say, let no precedent stand in the way of our doing right, as God gives us light to see the right. Then, again, consider for a moment the question of a separate submission as proposed: My friend from Onondaga [Mr. Corbett], in language apt as it was strong, yesterday, pronounced the policy "cowardly." And when my friend from Schenectady [Mr. Landon], in a spirit of earnestness that indicated the strength of his convictions, expressed the fear that, unless separate submission was adopted, our whole work here might possibly be rejected by the people, I felt that the policy was not too harshly characterized by the declaration that it was "cowardly." Why should there be separate submission of this question any more than others that are to be presented to the people in the amended Constitution? There will be wide differences of opinion, no doubt, upon proposed changes in our judicial system, our municipal organizations, our canal policy, our financial plan, our recommendations as to the powers and duties of the Legislature, and upon other subjects deeply affecting the interests of the State.

Why not have these each submitted separately to the people? Why single out the one question of suffrage, or rather property qualification for suffrage as affecting colored citizens, and say this alone shall stand by itself—all other questions shall be embodied as a unit? But I am answered, "Ah, but upon this subject of suffrage there is to be a party contest—the passions of partizanship are to be drawn out, and that cannot be said of the other questions." And is this true? Why, only yesterday the distinguished gentleman from Clinton [Mr. Weed], with certainly as good a democratic record as they make them now-a-days—a representative Democrat, young, fresh, vigorous and influential—avowed here in his place, openly and boldly that he was now, and always had been, in favor of extending the elective franchise to the colored man upon the same terms that it is enjoyed by white people, and his vote in the legislature, at its late session, shows that he means what he says. Other gentlemen of the same party, not here, perhaps, but elsewhere, I know avow themselves in favor of manhood suffrage. Why, the Democratic mayor of my city—the city of Troy—a gentleman who has a keen appreciation of justice and the obligations of gratitude, it is understood, received a large proportion of the votes of colored electors at our charter election last spring, and I feel confident that the Constitution will all the more strongly be commended to his support if it embodies the principle of suffrage equality. Then, it may be asked, why not submit it by itself, and let democrats and republicans vote upon it as they choose? The question may be answered by asking another. Why not submit the other questions by themselves as well? We want no piecemeal policy in the matter; we are to have a Constitution, not in separate patches, but as a whole, and as a whole it should stand or fall, precedents of the dead past to the contrary notwithstanding. Besides, sir, I am quite clear in my convictions, that there will be less of party feeling, far more harmony of public sentiment in connection with our work here, if we present for popular acceptance the form of a Constitution complete and as one question, rather than by the proposed division. And this, for the reason that the people will judge it one and complete upon its merits, and free from the antagonisms and political strife and prejudice which would inevitably attend a separate submission. In so far as the suffrage question, separately submitted, would receive special attention from the people—and that it would in that form provoke an active, and in some quarters, a bitter contest, I have no doubt—to that degree would the public mind be diverted from the consideration of the other important questions embodied as one in the proposed Constitution. "One thing at a time" is good doctrine in all the affairs of life, and we shall, in my opinion, best discharge our duty, and best serve our constituents, by presenting to them the results of our labors here in one form and that of a complete Constitution, without any fragmentary work about it. I do not intend, Mr. Chairman, to discuss here at any considerable length the merits of the question of the extension of suffrage to colored citizens. It does seem to me that, in this noon-day of the nineteenth century, there should really be

no issue raised on the subject. The black men are our fellow-citizens, possessed of the qualities of manhood, susceptible of improvement, capable of progress, marked by all the attributes that characterize human beings, subject to the same laws of God and man, and advancing with us to the same inevitable destiny of mortality. In so far as they have opportunities we know that they advance in knowledge, and as they are schooled in virtue or vice, so they rise or fall in the scale of manhood. Pursued by cruel prejudice, with the elements of manhood crushed out of them almost in infancy by the intolerant spirit of caste, it is surprising that they should have, in spite of all, so much of intelligence and virtue as they manifest—so much of the good sense that distinguishes our civilization—so much of the sterling patriotism that has stamped them with the honors of loyalty, so many representative men, eminent for their intellectual greatness and oratorical powers, of whom Garnet and Douglass are illustrious examples. Shall we continue the policy of cruel injustice to this people by denying them equality of political rights, and for no better reasons than those of precedent, and the opinions of some statesmen of a past, and, I may add, a less enlightened age? No, sir, the barbarism of the past must give way before the advancing power of liberty and civilization. The logic of the war, the claims of manhood, the decree of the Almighty, who has written our destiny in the very light of heaven, which is alike free to all his children—all proclaim the brotherhood of man, and assert the doctrine of impartial freedom. God directs; we must obey!

Mr. OPDYKE—While I do not propose to enter into a discussion of the report of the committee generally, I wish to say a few words on the subject of conferring the right to vote upon the colored man. I think much misapprehension exists as to the question at issue. It is not a question whether we shall confer the right of suffrage on colored men. That question, sir, has already been decided. They now exercise that right. The Constitution of the State has guaranteed it to them. The only question before us, is whether the property qualification which the present Constitution requires shall be continued. That is the whole question, and it does seem to me, that in a body of intelligent men, that question should receive but one answer, and that in the negative. The opinion that property confers on man a higher capacity to exercise the elective franchise exists in Great Britain still; but the fallacy has long since been exploded here. We have found that there is no necessary connection between the possession of property and political knowledge. Very often, sir, it is found that they do not co-exist in the same individual. That qualification became odious; we expunged it from the Constitution so far as relates to the white man. Why not do it now as relates to the black man? I would like to ask what characteristics the black man possesses that justifies the requirement from him of this qualification, when it is not required from the white man? Is there, sir, some hidden virtue in property when in the hands of the black man that it does not possess when in the hands of the white man? If so, has that virtue the



power of going up from itself into the moral and mental nature of the black man? It would be absurd to suppose that these questions could, either of them be answered in the affirmative; and yet, unless they can both be thus answered, the requirement is as ungrounded in reason as it is invidious in character. I cannot conceive, sir, how a great party can go before the people and advocate its continuance. I cannot even conceive how an individual elector, in view of the odium which now attaches to that requirement, can give it his vote. Sir, if I were more strongly opposed to negro suffrage than the gentleman from Kings [Mr. Murphy] it would not have the slightest influence on my action on this question; and I believe that the people of this State, when they come to understand this question in its naked simplicity, as they assuredly will, before they are called upon to vote for the Constitution that we shall present, will, with a degree of emphasis and unanimity that will greatly surprise us, declare that this partial and invidious distinction shall be expunged from the Constitution of the State. It is, after all, simply a question between the voting negro with property, and the non-voting negro without property. That is all there is about it. But, Mr. Chairman, there is another important aspect to this question upon which I desire to say a single word. It is known that the people of the United States, through their representatives in Congress, have decreed that the colored men of the South shall have equality of suffrage. A large majority of the representatives from this State concurred in that decree, and the people of the State have indorsed their action subsequently at the polls. I cannot see, therefore, how the people of this State can, in fairness, refuse to prescribe for themselves a rule which they enjoined and enforced upon others. The rule, sir, with regard to ourselves is unobjectionable and free from danger. But with regard to those on whom we have enforced it, it is most obnoxious, and of very doubtful expediency, on account of the greater ignorance of the masses of the colored race in that section. At the South the colored population nearly equals in number that of the white, and they have but just emerged from that benighted ignorance engendered by slavery, while here they are few in numbers and comparatively enlightened. It does seem to me that the people of this State will not put themselves in the unenviable position of refusing to take a homœopathic dose of the political medicine which they have administered in such allopathic doses to others. Sir, I believe that if they knew its qualities were noxious they would feel in honor bound to present the poisoned chalice to their own lips. In regard to the question of separate submission I will say at this time but a single word. I cannot for the life of me, see the propriety of submitting to the people separately, a question in regard to which there are no just grounds for difference of opinion, nor would there be now, or hereafter, were it not that the black man has hitherto been an exciting element in our political contests.

Mr. COMSTOCK — I very much regret that this Convention has embarked in a debate which it seems to me is unnecessary. I desire to submit a

few observations for the purpose of stating the question as clearly as I am able. In my judgment we have been debating a question in regard to which there is not, and cannot be, a negative voice in this Convention; and that is whether the law of suffrage shall be sent down to the people for them to decide upon the freehold qualification in regard to colored men. For it will be found when we have examined the subject, that every proposition before this committee involves that very question, and the only point remaining will be, whether it shall be sent in one form or in another form. Now, sir, it will be remembered that the Constitution of 1846 provides, in its principal enacting part, that the male inhabitants of the State who are citizens, shall be clothed with the elective franchise. It is supposed that that would confer the right of suffrage equally upon men of every color. It certainly would, if colored men as well as white men were citizens. But that enacting part of the Constitution of 1846 is followed by a proviso which prescribes a freehold qualification for colored suffrage, and taking the whole of the Constitution together, the elective franchise is vested in the white male citizens of the State, and in the colored citizens of the State, who, by thrift and prudence, have acquired a small freehold estate. So much for the Constitution of 1846. I now call the attention of this committee to the report of the Committee on the Right of Suffrage. That report, like the Constitution which it proposes to revise, vests the elective franchise in the citizen inhabitants of the State. But, unlike the Constitution of 1846, it omits the proviso which imposes the freehold qualification upon colored suffrage. Sir, suppose this Convention adopts the plan of suffrage submitted by the committee on that subject, what will be the question before the people? Not only that feature of the Constitution, but every other feature. All that we do in this Convention is but a mere proposition to the people, and, therefore, the plan of suffrage adopted by the Convention in that form, will merely ask the people to say whether they will or will not retain the freehold qualification for colored suffrage. That is the only essential difference between the plan of the Committee on the Right of Suffrage and the Constitution of 1846. There are other differences of detail to be sure, but in regard to the great right of suffrage, that is the fundamental and essential difference; and, therefore, the plan of the committee proposes precisely to submit to the ultimate verdict of the people the question whether that freehold qualification shall continue or shall not. I come next to the substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight], and we shall find that that has exactly the same characteristics. It differs only from the report of the Committee on the Right of Suffrage in regard to the thirty or ten days' citizenship in the State, and in regard to paupers, lunatics and some other matters of mere detail; but, like the report of the Committee on the Right of Suffrage, it limits the proviso imposing the freehold qualification upon the suffrage of the negro. Suppose, instead of the plan of the committee, that this Convention adopts the substitute of the gentleman from Cayuga



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polls and before the people, and take the popular verdict and be content with it? Upon every consideration, sir, which occurs to my mind, this question ought to be submitted separately.

Mr. AXTELL—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Axtell and it was declared lost.

Mr. SEYMOUR—I do not propose, Mr. Chairman, to detain the committee long, but before this question which we have before us shall pass from the consideration of the committee, I very much desire to make some remarks, particularly upon the real matter at issue, which is as to the manner in which the question that has been discussed shall be submitted to the people. I am pleased that the gentleman from Cayuga [Mr. C. C. Dwight], has presented the question, by his amendment, in the way in which he has. It presents it for the consideration of this Convention far better, in my opinion, than it is presented by the proposition as it came from the majority of the committee. It submits this single question, by striking out the word "white" from the proposition regulating suffrage, whether the white citizens and the black citizens of this State shall stand upon an equality at the ballot box. That is a simple, plain question, to be presented to the people, when they shall be called upon to pass upon the result of our labors. And I think in that form, coupled with the amendment proposed by the gentleman from Kings [Mr. Murphy] it submits the whole question upon which the people of this State will be called upon to act in reference to this subject. Now, sir, if you recur to the clause as it was reported by the committee, it will be found to contain various other considerations tending very much to embarrass the minds of members. We have noticed that in the discussion. I will merely allude to, but not dwell upon them, for they have been fully considered already by the committee. There is the important question with regard to the minimum period which shall elapse between the time when the citizen shall be naturalized and the time when he shall be allowed to vote, whether it shall be thirty days or ten days. There is also the question with regard to the disfranchisement of paupers—a question very embarrassing, as it is presented in the report of the committee. And there is the other question which the committee have coupled with it, in regard to lunatics and idiots. But all these matters are found in a much clearer and plainer manner, if you take the substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight], coupling it with the amendment of the gentleman from Kings [Mr. Murphy]. For one, I could never give my adhesion to a Constitution that should disfranchise from twenty to thirty thousand men of foreign birth who, acting upon the good faith of the previous rule on that subject, have declared their intentions to become citizens—have passed in part the ordeal that is required to become a constituent part of our government, with the expectation that, at a certain time, they will be permitted to participate as citizens in the right to vote. Whatever else might be

found in the Constitution which we shall frame, that is worthy of consideration and worthy to be adopted for the benefit of the people of this State, I never would give my consent, and I believe there are thousands in this State, who would withhold their assent from a Constitution which should contain such a provision. It would be a wrong to many thousand of worthy men who would make good citizens. They come from a class of people upon whom we have relied for years past in doing the great work that has built up our State and made it what it is to-day, the Empire State of this Union.

Mr. BARKER—Will the gentleman give way to allow me to ask him a question? I understood the gentleman to state that twenty or thirty thousand persons would be disfranchised if the thirty day clause were embodied in the Constitution?

Mr. SEYMOUR—Yes, sir.

Mr. BARKER—I would ask him if, in his inquiry, by which he ascertained this number, he found any fact disclosing why there were more persons applied for naturalization between that period last year and the two or three years previous?

Mr. SEYMOUR—I looked at no other time than in reference to the period when, in 1868, these persons coming forward to be naturalized will expect to be naturalized according to the rule that has been previously established. I do not consider it—

Mr. BARKER—I ask him if he has ascertained it as a fact that more applied for naturalization during the year 1866 than there did the three previous years together.

Mr. SEYMOUR—I do not know. I looked only at the year 1866, and I know this fact generally, with regard to these applications, that when the person applying is looking forward to the opportunity to give his vote for the Chief Magistrate of this country, which will be given in 1868, as we hope, it has been always found that, in regard to that election, larger numbers are coming forward to be naturalized than at any other election; and the number which I have stated here has not been obtained by a count or a record, but by a general estimate of the number of votes that may be expected from this quarter at that time. But, sir, with regard to the principle of this thing; this exclusion which is made by substituting thirty days instead of ten, is just as wrong if it were to apply to but five or six thousand as if it applied to the twenty or thirty thousand, the number which has been stated upon this floor. In neither case, there being in my opinion no necessity for a change of the rule, would I accept of a Constitution that would do such a gross and palpable wrong to a citizen, or to a person who desires to be made a citizen, and to exercise the elective franchise. But, sir, I do not propose to dwell upon that feature. As to the other feature of the report to which I have alluded, that of excluding the pauper, I think there will be equal injustice if you adopt the clause presented by the committee. We have been repeatedly told in this debate that we are living in the nineteenth century, that we are in a progressive age; and the ground upon which the discussion has proceeded in favor of relieving the colored race from

the property qualification is this idea of progress, of a more liberal feeling to be exercised by all on the subject of admitting persons to the elective franchise. Yet, at the same time, while it is sought to admit ten or twelve thousand of the colored race in this State to an equal franchise with the white race, it is sought in this arbitrary manner, and contrary to all former precedents, to exclude many thousands of white men from the privilege of voting, simply upon the ground that they are poor. An inconsistency so glaring as this cannot fail to attract the attention of the people of this State, and if retained in the proposed Constitution will induce tens of thousands of intelligent, liberal-minded men to refuse their assent to the whole instrument, whatever of good to the State may be contained in it. For myself, I freely declare here, that before I would give my assent to an organic law which would deprive the poor man of his vote, simply because he is poor, I would withhold my sanction from the whole instrument, and be content to live twenty, nay, one hundred years longer, under the present Constitution with all its defects. There is another subject which has been, to some extent, discussed, in relation to idiots and persons of unsound mind. Now, sir, I prefer the manner in which this is treated in the present Constitution, to that presented by the report of the committee. This is retained in the substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight]. It embraces the provisions of the present Constitution, with only the erasure of the word "white." By those provisions the Legislature of this State is empowered to pass such laws as are required for the purpose of excluding idiots, lunatics and persons of unsound mind, from the elective franchise. We have seen in the debate on this subject, how much a provision to exclude idiots and lunatics necessarily runs into it. It is unfit to be made a constitutional provision. You cannot regulate that delicate subject without entering into special provisions in detail, which would be unseemly, improper, and cumbersome to the Constitution. It should be left in the language in which the present Constitution leaves it for the direction of the Legislature, that they may apply, in the proper way, the test to discover and determine who are lunatics or idiots, and therefore unfit to exercise the elective franchise, and not require it to be decided at the ballot box. Now, Mr. Chairman, leaving that proposition, with many others in the report of the committee, which I think ought not to be embraced in the organic law of the State, we come to the simple proposition presented by the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight] striking out the word "white" and to the substitute proposed by the gentleman from Kings [Mr. Murphy]. After the very interesting discussion that we have had on the subject of the black race, in all its bearings of physiology, anatomy and every other point which can be applied as a matter of test to the capacity of the colored race, I shall not enter into any discussion on those points. It has been an interesting discussion, but I think entirely unprofitable, having no bearing whatever upon the question really before us. Nor shall I dive into the musty antiquity which has exercised some

minds in regard to the origin of society, whether this right of suffrage is, or is not, inalienable. The gentleman from Oneida [Mr. T. W. Dwight], in a speech this morning, full of learning on this subject, has, I think given as good an exposition of the origin and the condition of society, after it is organized, as we could find even if we were to consult the learned authors. It is true, that upon this subject of the original organization of society, the learned writers on natural law differ, and for two hundred years the world has been debating the question, and trying to discover what rights were originally man's, and what were really due to the organization of society. As I said before, I think this is a question which had better be left to those who are pleased to discuss it for their own amusement, rather than for any practical purpose. I take the question as it stands before the people of this country. It comes up as a practical question, and it is to be decided as every practical question is to be decided, as the public may judge of its expediency—expediency in the broadest sense of the term; as they may judge of its policy—a policy co-extensive with all the interests of this State. Now, sir, they have always decided these questions of suffrage, whether they have related to the African race or to the white race as questions of national policy. They have decided them as questions of political expediency, and they always will decide them so, and whatever may be the opinions of gentlemen upon the subject of "natural right," or however much they may feel the right of a class of persons is to be trodden down if they are not permitted to exercise this right of suffrage, the people at large, the mass of the voters, those who will speak on this subject at the ballot box, those who have sent us here to deliberate upon this business of the re-organization of this great State, as to all its interests, they will look at it as a practical question; they will look at it in the light of a public policy. Now, if this were the only question before us, there would be no need of considering the manner in which it was to be submitted. I presume that the gentlemen who are in favor of embodying unrestricted suffrage of the African race in the Constitution, would not refuse to submit that question as a separate proposition. I doubt not that the majority of this Convention would be willing to present it by itself, because it would then be one distinct and separate proposition—the Constitution of 1846 and this amendment to it. Sir, I view the question of the manner of submitting the question as highly important; more important than those questions so much elaborated by gentlemen as to the natural and abstract rights of men in society, or as to the right of the colored race to participate in the elective franchise. After a period of twenty years we have been sent here to endeavor to improve, if we can, the Constitution under which this great State is to be governed for a long period to come. There have been great evils complained of. The public never would have called this Convention for the single purpose of determining the question whether ten or eleven thousand colored people, who do not now participate in the elective franchise, should be permitted to do so;

but they were moved by the pressure of evils arising from imperfection in the present Constitution, rather than by any interest on this subject. They felt that the judiciary system was not adequate to the wants of the State; that for the period of the last ten years it had amounted almost to a denial of justice to the whole of the people of this State, and that question, more than any other, prompted the feeling through the whole State which has called this Convention together. But, sir, there were other questions which have agitated the State for years past, and they are now pressing upon us. We saw some indications in reference to those questions, on the first assembling of this Convention, when the question of the order and regulations of business were brought before us. Sir, this State, its capital, its industry, its progress in material wealth and greatness, has not stood still for the last twenty years. It has advanced. And there are many who believe it has advanced so far and is advancing so rapidly beyond the rules and regulations of the past, that new and more enlarged provisions are demanded in its organic law for guiding and facilitating its further progress. Sir, there is a deep feeling throughout this State, and I think, without disparagement, to those feelings which refer to what have been called the rights of "manhood" far deeper and stronger than they are. This strong and unmistakable public sentiment pertains to our internal commerce and trade. It has called forth conventions in various parts of the country, to express the views of the American people and of others with whom we are connected by the indissoluble ties of business and of trade, and to express opinions in reference to what shall be done in the future. The question is what shall be done that the State of New York may maintain in wealth and commerce, its proud position. If gentlemen suppose that public sentiment and public expectation is all aggregated and concentrated on this one question of extending the right of suffrage to ten or eleven thousand colored men, they are mistaken. The commercial and business men of the State, to whom I have alluded, embrace those who, by their capital and their enterprise, reach every quarter of this State. They reach the masses of the people, nor are they confined to this State. They are the people of the great North-west, and our neighbors in the British Provinces at the North. I declare to you, Mr. Chairman, and to the other members of this committee, that they expect something to be done in reference to the facilities for our internal trade and commerce, a subject dependent for its just arrangement upon a proper system of finance. The great and all absorbing question of finance stands first and foremost in order. Upon that will depend the future prosperity of this great State. Have gentlemen thought how far that reaches—how far the future of our commerce and trade and the honor of this State are dependant upon the financial system to be settled by this Convention? We live at a peculiar era of the country's history. We have just emerged from a great struggle for the existence of our nation, and as a citizen of New York, I am proud to point to the record of this State, to the thousands and hundreds of thousands of men who have gone forth from our borders

to preserve the Constitution and the government. It is their triumph which has enabled us to assemble to-day as one of the independent States of this Union. But let me remind gentlemen that this has not been accomplished without a lavish expenditure of money. I need not count the millions of dollars. New York stands pledged for, to the nation, about one-fifth of the whole national debt of nearly three thousand millions. This State alway has paid—she will ever continue to honorably discharge all her obligations. It is one of the objects of this Convention so to arrange our financial system, that the honor of New York as a debt paying State, as a State from the very beginning the champion of internal improvements for the development and advancement of trade and commerce—shall never be tarnished. Besides the large portion of the national debt which is resting upon us, and now pressing upon the tax payers, we have a large debt of our own—a debt of the State proper—amounting to nearly fifty millions of dollars. Besides that, sir, our counties, towns and cities are incumbered by debts amounting to about as much more, making an aggregate, without considering the national debt, of more than one hundred millions of dollars.

Mr. RATHBUN—It seems to me, Mr. Chairman, that this debate is extending itself to a new field—that the gentleman is discussing questions which ought to be raised at another time.

The CHAIRMAN—The Chair is of the opinion that the gentleman from Rensselaer [Mr. Seymour], is applying his argument to the question now pending before the committee.

Mr. SEYMOUR—I certainly intend to, Mr. Chairman, and if I supposed there were any who failed to appreciate the fact I would sit down now. It is because I am thoroughly convinced that they do appreciate it, and that before the sessions of this Convention shall be closed they will more fully appreciate it, that I have desired to be heard on this question, and on others to which I have alluded. Now, sir, after stating thus much in regard to the great questions to be settled by us, I come to the distinct point, whether the extension of the right of suffrage to ten or twelve thousand of the black race (I do not use the term disparagingly), is to be linked with and to be made an inseparable condition of the performance of those other and higher duties to which we are called. Sir, I ask the gentlemen on the other side, those who feel so sensitive on this question of the rights of the black race, whether they do not believe there are thousands of their constituents who will feel equally interested in these great questions to which I have alluded? And whether, if the Constitution which we are to make shall not, upon the financial question and the canal question, and the judiciary question—the three great prominent subjects of our consideration meet the wishes and expectations of the people of the State—they expect to carry a Constitution simply upon the extension of suffrage to ten or twelve thousand of black men? So, let us not deceive ourselves. This question of the status of the colored race has been the most exciting of all questions. It may be so when it shall be presented to the people in the Constitution we are about to propose.



The tendency is to excite feelings which are dissimilar to those that ought to operate upon the public mind when it comes to settle down upon the great basis of government, and the very existence of this State at this period. I have said it was an extraordinary period, and fraught with great dangers. It is so. With all this debt resting upon us we have nothing to represent values as a circulating medium—nothing but a paper currency, the most uncertain and the most fluctuating. By this uncertainty and great expensiveness it is exposing us in all our business relations to panics and reverses in finances greater than we have ever before been exposed to. No business man reflects on this subject without regarding these dangers. We must settle these questions and determine upon a public policy at this time in reference to these subjects, and they will demand a business-like, calm consideration of the people of this State. Mr. Chairman, politics die out, parties die out, and the issues that have divided parties pass away. This question of the status of the black race, which has divided the parties in this State, and throughout the Union during the last ten or twenty years, will pass away. But sir, the question of internal trade, the question of the proper adjudication and preservation of your rights in our civil tribunals, and the higher and more important questions of the finances and the honor of this State will not pass away. They will outlive all parties, or else our proud State will sink into decay and ruin. Now, sir, I do not wish for one to mix up this question of the suffrage of ten or twelve thousand people white or black, with these grave considerations. Sir, do not gentlemen see that they are attempting to decide this question of suffrage at a time when the public mind is very sensitive upon the subject of the status of the black man and his rights. It has agitated this as well as our sister States for the last ten or twenty years. It has shaken our Union to its center. It has drawn us into a war. It has severed the Union, and were it not for the strength and patriotism of the people of the North, that Union to-day would have left us a divided people ever to remain divided. Even now, after the glorious triumph of the cause of the Union; even now, after the war is over, men are studying, and considering, and debating, as they never did before, the great problem, what shall become of the black race? Do you not believe that the people, when they shall be called to vote upon the Constitution to be presented for their approval or rejection; when they shall have heard in the canvass both parties on this subject, will be excited by this subject of free suffrage to the colored race? Is there not danger that this subject, temporary in its nature and soon to pass away, may absorb the attention of the people to the neglect of more important questions which will remain with us and our posterity forever? Can this question be discussed in the political canvass without exciting prejudices which ought not to come into the consideration of more important and vital questions? Can the people of this State be called to the ballot box in November next without seeing for themselves or having forced upon their consideration, that this question of suffrage, is but an initiatory

step to equality—to political equality and social equality, of the white and black races? Do I state this too strong? Look at the South now—you will behold there those old States, covered with the honor of their revolutionary sires—the States once governed by the Marions, the Rutledges, the Randolphs, and the Macons which may soon, under the operation of this system of suffrage there, be governed by the black and not by the white race; which may soon send to our Congress black men for representatives and black men for senators, and in the end, may fill the office of Chief Magistrate of the country with one of their own race. Do you believe the people will be blind to the progress and probability of things then? Do you think they will ignore the fact also, which more than once has been illustrated in this State, that a party need not be in the majority, but may be in a very small minority and yet hold the balance of power between the great contending parties, and that the very same thing that is now being enacted in the Southern States may yet exist in the State of New York! And will gentlemen on the other side of the house deliberately propose to go into an exciting contest upon questions of this kind, when the public mind is thus disturbed by consideration of this exciting character, and by all those feelings that ever have, and ever will, intensify a contest of different races. Do they deliberately propose to carry into a canvass that is to settle the financial policy of this State—its judicial system and internal commerce for twenty, thirty, or fifty years, the absorbing elements of bitter partisan strife? Now, sir, let the party which claims this to be such a transcendent right, which boasts of this as the grand idea of the nineteenth century, which claims that the young men of the rising generation have been baptized into this idea of the political and social equality of the white and black races—let them boldly present their proposition and let them stand up and vindicate it upon its merits and not seek to make its fate dependent upon other and more important questions. If it is what they claim it to be, as the gentleman from New York [Mr. Opdyke] has expressed it, a “homœopathic dose,” it need not be sugared over with a financial system which shall suit everybody. That homœopathic dose need not be made sweet and palatable by a canal system that shall suit those who otherwise would not take it. No, the best interests of the State forbid that it should be thus presented to the people. If gentlemen claim this question to be a sacred question of right, then let them maintain it as a right. After being twice defeated before the people on this distinct question, I hope you will now consent to meet your opponents at the polls upon the merits of this question, independent of extrinsic and foreign aid. If the people shall give a verdict for you, we shall bow in humble deference to that verdict. But we look for other and more permanent results from the labors of this Convention, measures affecting the welfare of our great State in all its material and social prosperity, for years to come. We hope by the adoption of the amendment of the gentleman from Kings [Mr. Murphy], to be able to go to the people of this State and to say: “We have met

and we have performed our duty; we have acted upon all these great questions, and in order that we might enable you to preserve and perpetuate those great interests for yourselves and your posterity down to the latest generation, we have presented them by themselves, and we have presented this other exciting question by itself." That is the way, in which, looking at all these interests, I desire these questions to go to the people. If, after we shall have made a good financial system, a good canal system, and a good judicial system, these shall be lost in political excitement, engulfed in the never-ending question as to the status of the colored man—if the anticipated benefits to be secured by a new Constitution, shall thus be lost to my constituents, I shall not without blushing be compelled to confess to them. "These were all lost to you, because I voted, that you should not have them unless you were willing also to take with them the granting of free suffrage to the colored man; that important as these great measures were to your prosperity, I have chosen so to place them before you that unless you are willing to swallow this 'homœopathic dose,' as it has been called by the gentleman from New York [Mr. Opdyke], you shall not have the benefit of any remedies of existing evils, nor any of those important amendments we had proposed to insure the prosperity of our State in the future."

Mr. RATHBUN—I move that the committee do now rise, report progress and ask leave to sit again.

The question was then put in the motion of Mr. Rathbun and it was declared carried.

Whereupon the committee rose and the President resumed the Chair in Convention.

Mr. ALVORD from the Committee of the Whole reported that the Committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

On motion of Mr. MORRIS the Convention adjourned.

MONDAY, JULY 15, 1867.

The Convention met at seven o'clock, pursuant to adjournment.

Prayer was offered by Rev. J. P. MAGEE.

The Journal of Saturday was read by the SECRETARY and was approved.

Mr. GRANT moved that the Convention do now adjourn, which was lost.

Mr. MERRITT offered the following resolution, and asked that it be laid on the table.

*Resolved*, That the consideration of all propositions having in view the mode or manner of submitting the Constitution as revised, or any article or any part thereof, to the people, be postponed until the Constitution or, proposed amendments shall have been definitely acted upon by the Convention and prepared for submission.

Which was laid on the table.

Mr. WALES offered the following preamble and resolutions which he requested be laid on the table and printed:

WHEREAS, The President and Vice-President of the United States are elected by a board of electors, the members of which are apportioned among the respective States; and

WHEREAS, The part of said board of electors apportioned to each State respectively, is elected or appointed by each State in accordance with its own rule or law; and

WHEREAS, The Senators of the United States are appointed by the Legislature of the respective States; and

WHEREAS, The Members of the House of Representatives of the United States are elected by the voters of single districts, into which the respective States are divided; and,

WHEREAS, The Congress of the United States acts reciprocally upon and for the several States respectively, and upon them all collectively; and,

WHEREAS, The Executive and Legislature of each State are, for certain purposes, agents of the United States, especially in time of war, in raising clothing, forwarding and paying troops; now, therefore,

*Resolved*, That in the election of the Board of Electors, and of the Members of the House of Representatives, and in the election of the Governor and Lieutenant-Governor, and the Legislature of the respective States, a uniform system of suffrage ought to prevail; and be it further

*Resolved*, That the standing Committee on the Right of Suffrage be instructed to inquire into the expediency of authorizing, by Constitutional provision, the Legislature of the State to accept such uniform system of suffrage, when such system shall have been legally perfected and promulgated by the general government; and be it further

*Resolved*, That the Secretary of this Convention be requested to send or cause to be sent a copy of this preamble and of these resolutions respectively to the President of the Senate and to the Speaker of the House of Representatives of the United States, and to the Executive of each of the respective States of the Union.

Which were laid on the table and ordered to be printed.

The Convention then resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to hold Office, Mr. ALVORD of Onondaga, in the Chair.

The CHAIRMAN announced the pending question to be on the substitute offered by Mr. Murphy to the substitute offered by Mr. C. C. Dwight.

Mr. MERRILL—I ask the indulgence of the committee for a few moments only, to state some of the reasons why I cannot favor the proposed substitute. The proposition is to retain the first section of the article on suffrage, virtually as it now stands. Sir, I object to that section, because it is uncertain in its terms, loose in structure, containing much that is useless and omitting much that is essential—a hopeless tangle of "one year," "four months," "thirty" and "ten" days. I am a conservative to the extent of conserving all that is most excellent in the existing Constitution, but a very decided radical where there is room for

manifest improvement. Because a thing has existed for twenty years is no certain sign that it cannot well be bettered. We have indeed wasted our opportunities and rejected the teachings of experience, if we are not able to improve, in some respects, the work of our fathers. And it seems to me, sir, that the assertion made by the gentleman from Cayuga [Mr. C. C. Dwight], before a vote had here been taken, that nothing but the old article would prove acceptable to the Convention or to the people, was scarcely warranted. If that be true, the various articles should mostly have been referred to the engrossing clerks, "with power to report complete." I deny that the section in question has given satisfaction to the people of this State. I insist that the fundamental law, declaring what citizens shall be entitled to vote, should be specific, clear, and calculated to promote a pure, intelligent, independent expression of the popular will. Under the present complicated article, not one citizen in five has been able to state the precise definition of a lawful elector; and a man changing his residence must needs consult a lawyer, or, as was predicted by an eminent member in the Convention that framed it, "an inspector of a dozen years' experience," to ascertain his *status* and his rights! It has been easily evaded in some of its provisions, and has kept open "a macadamized road" to frauds. The clause allowing men to vote for certain officers only, on a thirty days' residence in the district, is ambiguous and undigested, and has called for more "judicial construction" than a whole article should demand. The four months' residence in a county is useless, and each year disfranchises far more citizens of the State than would be excluded under any new restriction the committee proposes. I object further to the proposed substitute that it does not make the buying and selling of votes a ground of challenge, and thus secure what the minority report aptly terms "a self-executing law." Without this feature, any attempted barrier against corruption would be futile. If the object of the requirement for ten days' citizenship is to prevent fraudulent naturalization, as suggested by the inquiry of the gentleman from New York, [Mr. Hutchins] which was shrewdly dodged by the gentleman from Kings [Mr. Barnard] the end would be much more fully accomplished by the thirty days' term proposed; and being equally specific and well known, as well as uniform with the election district residence, it would be equally just. For myself I shall not object to postponing the commencement of its operations until after 1868, not desiring to work injustice to any, though having no special sympathy for the large class who postponed naturalization to avoid the duties of citizenship during the war. The gentleman from Onondaga [Mr. Andrews] did well in calling attention to the report of Gov. Bouck on this subject in 1846. The committee of which he was chairman reported unanimously in favor of a sixty days' citizenship and sixty days' residence in the election district, and the report was sustained by many of the best men and strongest Democrats in that Convention,—Mr. Stow arguing that it is better to deprive one legal voter of his right, than have

twenty or thirty others deprived of theirs by illegal votes," and Mr. Ruggles declaring that it would put an end to notorious frauds. In regard to the article reported by the committee of which I am a member, I deem it proper to offer a few words of explanation and defense. The majority were not agreed on every detail. Some of the criticisms and amendments here offered are such as myself and others presented in the committee. But the principles embodied in the article, beyond the few exceptions mentioned in the minority report, were generally agreed to. In listening to the debates, I confess to a surprise that learned legal gentlemen should treat the propositions as novel and impracticable. I can only account for this, with the greatest deference, on the supposition that the gentlemen's thoughts have been so much devoted to their special duties that they have not fully examined the questions involved; as was evidenced by one eminent gentleman on Saturday, who spoke frequently of the word "white" as being in the old article, and erroneously asserted that lunatics and idiots can be excluded by law under the present Constitution. The language employed by the committee was not selected without full consideration, research and comparison of views, and it was fully indorsed on Saturday by very eminent authority [Mr. T. W. Dwight]. That which gentlemen have declared to be unsound in theory, harsh in its operations, and impracticable, stands almost word for word in thirteen existing State Constitutions of this country. I will read very brief extracts from various Constitutions, showing the classes excluded from voting.

*California* — "No idiot or insane person, or person convicted of infamous crime,"

*Kansas* — "No person under guardianship, *non compos mentis*, or insane."

*Louisiana* — "No pauper, no person under interdiction, nor under conviction of any crime punishable with hard labor."

*Maryland* — "No lunatic, or person *non compos mentis*."

*Massachusetts* — "Excepting paupers and persons under guardianship."

*Minnesota* — "No person under guardianship, or who may be *non compos mentis*, or insane."

*Nevada* — "No idiot or insane person."

*New Hampshire* — "Excepting paupers and persons excused from paying taxes at their own request."

*New Jersey* — "No pauper, idiot, insane person."

*Rhode Island* — "No pauper, lunatic, person *non compos mentis*, or person under guardianship."

*South Carolina* — "No pauper."

*West Virginia* — "No person of unsound mind, or a pauper."

*Wisconsin* — "No person under guardianship, *non compos mentis* or insane."

Now I ask gentlemen what there can be novel or impracticable in provisions like these, that have worked satisfactorily in so many States. The policy of the exclusions and extension may fairly be debated; but let us meet the principles fairly on their merits, and treat them frankly, as becomes men framing organic law. The committee undertook to, and I think did, define the classes of citizens who shall be entitled to vote. It based



suffrage on adult, rational, independent manhood. It excluded idiots, lunatics, paupers, and persons under guardianship (a phrase I do not like, but which has respectable precedents for its use), in addition to felons and those convicted of bribery. Then the fourth section says, as now: "Laws may be passed *for ascertaining by proper proofs* the citizens who shall be entitled to the right of suffrage hereby established." Under this section, which seems to have been strangely lost sight of in the discussion, the Legislature would, of course, prescribe and provide for ascertaining, who shall be included in these non-voting classes. It seems to me, sir, that the evil results so elaborately set forth as likely to attend a fixed and definite elective franchise, evidence a more lively imagination than sound judgment. The fertile fancy of the facetious gentleman from Kings [Mr. Barnard] has depicted the ridiculous results of suppositious challenging at the polls of a certain bail-bond signer, and certain persons posted as "blockheads," if inspectors are "made judges of lunacy or idiocy." Now, sir, *supposition* has no limits. Suppose the bottom falls out of Lake Erie—suppose the sea-serpent swallows the Atlantic cable—suppose, for a climax, that the democratic party should cease to be led by Bourbons [laughter]; "who learn nothing and forget nothing." We must suppose a little good sense, and a due regard for party interests and the public good, to rest in the people. The law which provides a simple method of ascertaining by proper proofs the rights of persons challenged for felony, bribery or infamous crimes now, could easily be extended so as to amply suffice for all the committee proposes. It would be a very simple matter to present the requisite proofs to the boards of registry, and thus prevent wrangling at the polls; or in cases not thus reached, to prescribe a few sufficient proofs for the inspectors, as suggested by the learned gentleman from Oneida [Mr. T. W. Dwight]. In respect to the classes excluded, a few words may be proper. It seems to me that sentiment has run into sentimentality over the class called public paupers. If these dependent people are indeed the "bold peasantry" which the eloquent gentleman from Ontario [Mr. Lapham], drew on the poet to describe as

— "their country's pride,"

"Which, once destroyed, can never be supplied,"

[Laughter.]

I give up the case in advance. But if they are, in sad truth, nine-tenths of them graduates of grogeries, wrecks from the rum shop, victims of their own vices, who for three hundred and sixty-four days in the year have no interest in society or government but to be fed and clothed by its bounty, I submit that the case is entirely different. Why, sir, has it altogether escaped the attention of the acute gentlemen who speak on this floor with their eloquent tongues wagging towards the almshouses, that *the existing Constitution contemplates the exclusion of this very class*? It provides that inmates of almshouses shall not gain a residence while subsisting on public charity, the framers of that instrument naturally taking it as granted that these people would remain in the custody of their governors until finally discharged. The intention evidently was to preserve the dig-

nity and worth of the ballot-box by excluding paupers, leaving their legal residence at the place whence they came whenever they should again be independent citizens. But, like many other sections of this old Constitution that failed to express the intended meaning or fully secure the end sought, this object has been thwarted; and by emptying the poor-houses just on the eve of an election the inmates have been "voted" at their old homes by the partisans who happened to control the institutions. In my own county, and other rural communities having a small percentage of paupers, and those far removed from a legal residence, the evil has been less marked than in the great centers of population, and the intended constitutional exclusion of this class has been more perfectly accomplished. And yet this exclusion has awakened no heroic strains over "a crusade against the unfortunate poor men;" and the poor laboring men—the bone and sinew of the State—have not felt it to be a hardship whenever their votes were not neutralized by governed dependents, dragged out of almshouses for that purpose. Has the State, then, been "to hastening ill a prey," or has this annual exodus of "the bold peasantry" in some quarters of the State, "under watchful keepers," preserved us? And yet, sir, in full view of this plainly intended exclusion of paupers by the existing Constitution, certain portions of the press have raised a hue and cry over the committee's action *in remedying what is merely a defect*; and an honorable gentleman has declared on this floor that he would vote against the proposed Constitution if this palpable loop-hole in the old one is corked up by substituting explicitness for indirection! The exclusion does not involve a property qualification, as has been often charged. A man may be so poor that by comparison Lazarus was a petroleum prince, he may beg from door to door, and still vote. But if to "honest poverty and a' that" (which having long experienced I should be the last to proscribe) he adds *pauperism*, and withdraws to the almshouse, becoming too often the mere creature of his governing keeper's will, I hold that his vote unnecessarily degrades the franchise. Of course there are exceptional cases where the exclusion would be unnecessary and harsh. But it is so with all restrictions, and cannot overbalance the great abuse and injustice it prevents. The registry deprives many worthy citizens of their right to vote every year; but, while guarding the purity of the ballot-box, shall it for this reason be given up? As for the disabled soldiers whom it is urged this exclusion might effect, the chairman of the committee has truly answered the objection. They are not, and never should be, paupers. Whatever is needed for the comfort and support of those who cannot support themselves, is vastly less than the nation owes to them. It is all "for value received," and the receipt can never, alas! be in full! But the laws framed under the article could easily confine the exclusion solely to inmates of almshouses, which would more exactly meet my views, excepting the soldiers in terms. And yet, any culpable community that permits its mutilated heroes to languish in the poor-house, should be shamefaced, rather than sensitive, over the fact that it could



not put to some use its dishonored defenders, by seeking them out on one little day in all the weary year, to vote "the right ticket!" [Laughter.] So far as the lunatics and idiots are concerned, the sentiment has been general that they should not vote. Some gentlemen have urged that the terms are not sufficiently explicit; but their use in the Constitutions as before quoted, and the fact to which I have urged the attention of the committee—that the proposed article does not deal in details, but fixing the classes, empowers the Legislature to prescribe and provide for ascertaining who are embraced therein, do not seem to warrant the objection. There is not a single Constitution in existence where these well understood words are not used simply by themselves, without any such qualification as "judicially determined," or "adjudged." If it is conceded that they should not vote, let us say so. Honesty and explicitness are better than indirection and ambiguity in defining the electors in the organic law, and attempting to dignify and render independent "the freeman's weapon." The proposition to establish impartial suffrage, and secure equal rights for equal citizens, has been so fully and so ably discussed that I will not consume the time of the Committee by examining it. But I could not help thinking, during the labored effort of the gentleman from Kings [Mr. Murphy] to prove the inferiority of the negro race, that, according to our democratic Constitution and the proposed amendment submitted by the gentleman, only "a narrow neck of land," worth \$250, separates the black man from political equality with the man of the most regular shin bones and approved Caucasian heels. In view of what is manifest destiny, those who claim that capacity for "solving problems in Euclid," and growing straight hair, carries with it the custody of black men's rights, should end their lugubrious apprehensions of equality by singing the familiar hymn, so soon to be expurgated forever:

"Lord! on what a slender thread  
Hangs white supe-ri-or-i-tee!"

[Laughter.]

For the people of this State will tolerate no longer continuance of a wretched oligarchy of the skin; and will hold us unfaithful to our high trusts if we fail to brand with our disapproval all senseless and undemocratic tests of race, or color, or property.

Mr. EDDY — I am opposed to the exclusion of public paupers from the right of the election franchise. Upon this branch of the subject only I desire to make a single remark. Having been charged with the superintendency of the poor in my own county for a series of years, am somewhat prepared to judge as to the class of voters that are the inmates of these charitable institutions, in the rural counties of this State. It is the case in my own, as well as many other counties, that the different towns support their own poor in the county poor-houses, and the paupers do not lose their residence in the towns while inmates of the poor-house, and consequently the only place they can vote is in their respective towns, and they are, therefore,

removed from any influence of their keeper while exercising that right. I could give the history of many different individuals, who have, through the force of unavoidable circumstances, become the recipients of public charities in these institutions, and whose previous history, show that they have been an honor to their country and a blessing to the world. I will detain the committee by reciting only one instance, as there has already been sufficient time spent in debate on this subject, and that the history of the late Hon. Archibald Dixon, who at one time had the honor of representing the county of Otsego in our Legislature, and while this institution was under my charge was an inmate of the same, and in the mean time, early in the history of the late rebellion, held correspondence with Major-General John A. Dix on the state of the country, and some of the letters then received were published in the county papers. Shall we exclude this unfortunate but frequently worthy class of citizens from what, with many, is their highest ambition, and apparently their greatest enjoyment—the right of the elective franchise? I trust not.

Mr. MORRIS — The debates upon negro suffrage have already consumed several days, and it seems probable that some time yet will be given to its discussion, before we come to a vote upon the motion before the committee. We have had learned dissertations upon the anatomy of the negro and many quotations from distinguished authors, ancient and modern, to prove the inferiority of the black man to the white man, on one side, and on the other, to show that there is no material difference except in the color of the skin. These earnest and prolonged discussions show that negro suffrage is the great exciting political question of the day; and it is for this reason that it seems to me eminently proper and judicious to submit the question to the people separately from the new Constitution we are now forming. The high character of the gentlemen constituting this Convention, and the liberal and elevated sentiments expressed on the various subjects of public interest claiming their attention, indicate that the new Constitution will be, as a whole, so much more suited to the present wants of the State than the one of 1846, that if this negro suffrage extension be omitted, and which effects only some 11,000 blacks, there will probably be not one of this Convention who will not conscientiously and earnestly recommend his friends to vote for its adoption. We must not be so carried away by this question as to lose sight of the important reforms in State government which the new Constitution is designed to effect, and which virtually concern the prosperity of this community. Probably the work of this Convention will occupy more than a hundred days, and the expense to the State may exceed the appropriation already made. It is unwise to run the risk of losing the results of so much labor and of expending so much money in vain, by incorporating in what we know to be unobjectionable a condition for its acceptance, which we well know to be highly repugnant to many of the electors. If the people desire the extension of the franchise to the blacks, they will

vote for it, and if they do not, it is but right that they should have the opportunity of voting against it. It is not our prerogative to *dictate* to the people, but to represent them. No one can read the many newspapers published within and beyond the limits of this State, and fail to be convinced that the people wish and expect and demand a separate submission of the extension of negro suffrage.

Mr. AXTELL—I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Axtell and it was declared lost.

A division being called for, it was had and the result declared, thirty in the affirmative and thirty-six in the negative.

Mr. WEED—There was no quorum voting.

The CHAIRMAN—The chair will request the President to resume his seat.

Whereupon the President resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that upon a division in the committee having in charge the report of the Committee on the Right of Suffrage and the Qualifications to hold Office, it was found that there was no quorum present.

The PRESIDENT announced the fact as reported.

Mr. GREELEY—I ask a call of the roll.

Mr. WEED—I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Weed, and it was declared carried.

So the Convention stood adjourned.

#### TUESDAY, July 16, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by Rev. J. P. MAGEE.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. GERRY presented a proposed plan for the government of cities, by a member of the New York bar.

Which was referred to the Committee on Cities, their Organization, etc.

Mr. GOULD presented a petition from seventy-two citizens of Claverack, in the county of Columbia, for a provision restraining the Legislature from granting aid to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HARRIS presented a petition from the Long Island Baptist Association, asking for the incorporation of a clause in the Constitution, prohibiting the donation of public money to sectarian associations.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HARRIS also presented two petitions from the inhabitants of the county of Albany asking for the incorporation of a clause in the Constitution prohibiting the donation of public money to sectarian associations.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GROSS presented twenty-six petitions from the citizens of New York protesting against prohibitory legislation and in favor of general laws regulating traffic in fermented liquors and wines.

Which was referred to the Committee on Adulterated Liquors.

Mr. CURTIS presented a petition from Mrs. Horace Greeley and other citizens of Westchester county, asking for equal suffrage for men and women.

Which was referred to the Committee of the Whole.

Mr. FOLGER presented a memorial from Emily P. Collins, of Rochester, asking that women have the privilege of voting; that the question be submitted in 1869, and that the privilege of voting to males and females be to those who can read and write.

Which was referred to the Committee of the Whole.

Mr. BALLARD presented the petition of one hundred and seventy citizens of Cortland county, asking for a constitutional prohibition against the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT presented a communication from the Auditor of the Canal Department in answer to a resolution of the Convention adopted July 9th in reference to the amounts paid contractors, etc.

Which was referred to the Committee on Canals, and ordered to be printed.

The PRESIDENT also presented a communication from the Commissioners of the Land Office, in answer to a resolution of the Convention adopted June 18th, in reference to the salt reservations.

Which was referred to the Committee on the Salt Springs of the State, and ordered to be printed.

Mr. MERRITT called up the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the consideration of all propositions having in view the mode or manner of submitting the Constitution as revised, or any article or any part thereof, to the people, be postponed until the Constitution or proposed amendments shall have been definitely acted upon by the Convention, and prepared for submission.

Mr. MERRITT—My object in offering this resolution is to eliminate from the discussions anything that is a mere matter of expediency. I know very well that there is at the present time pending before the Committee of the Whole a question pertinent to the mode and manner of submitting propositions to the people. I presume that perhaps the Convention may not have fully considered this question. I therefore propose to call up this resolution for consideration to-morrow, and until that time I ask that it be laid on the table.

The resolution was laid on the table.

Mr. S. TOWNSEND called up the resolution offered by him on the 19th of June.

The SECRETARY proceeded to read the resolution as follows:

**Resolved**, That Committee No. 2 on the Legislature, its Organization, etc., be requested to take under consideration and report to this body, upon the policy of providing that the House of Assembly consist of one hundred members, to be elected yearly from single districts—that the Senate consists of eight members, one elected from each Judicial District, for the term of eight years, one each year on the general ticket; that the sole power of initiating and enacting laws be vested in the Assembly—that the legislative power of the Senate shall consist of considering and revising such acts as may be passed by the Assembly. That the salary of Senators be \$5,000 and of Assemblymen \$1,000 per annum.

Mr. S. TOWNSEND—I wish merely to say, Mr. President, that I allowed this resolution to lie on the table for the length of time it has, in hope that some other propositions, equally or more definite, would be presented to the Convention, which would meet my approval more than the one I hastily threw out at the time; but as there has been none that I remember, I now move that the resolution be referred to the Committee on the Organization of the Legislature. I also take the liberty to state and I believe the majority of the members on this floor will agree with me that this question is one of the most important that will come before the Convention for consideration. We have already been engaged for some time in a discussion of a question called the suffrage question, which only concerns about one per cent of the population of the State, but this question concerns every individual, man, woman and child in the State. The appeal comes to us from the people to endeavor to do something to raise the character of legislation in this State; and I hope therefore this resolution may be referred, and that at least some effort will be made to accomplish so desirable an object.

Mr. BARTO moved to take up the resolution offered by him on Wednesday last.

The SECRETARY proceeded to read the resolution as follows:

**Resolved**, That the Superintendent of Public Instruction be requested to prepare, as soon as possible, and communicate to this Convention, a tabular statement showing:

1. The whole number of children in each county in the State entitled to attend common schools each year since 1840.

2. The number of children attending such schools in the several counties each year since 1840, and the number not attending.

3. The amount of taxation imposed upon the people in the several counties of the State for school purposes in each year since 1840, State, county, town, and municipal tax, each stated separately, and the percentage each of State, county, town and municipal tax upon the amount of taxable property.

4. The ratio of taxation to the whole number of children entitled to attend common schools in each year since 1840.

5. The ratio of taxation to the number actually in attendance in each year since 1840.

6. The ratio of increase or decrease in the attendance upon schools in each county, as taxation has been increased.

7. The number of such schools which have become free, and the year in which they became free.

8. The ratio of increase or decrease, in attendance upon such schools in municipal corporations, as have been made free, to the whole number of children entitled to attend such schools.

And further, that the Superintendent be requested to report to the Convention, how soon he can probably make the above statement.

Mr. ALVORD—For the purpose of having the business of this Convention proceed correctly, I would ask whether it is not necessary to make a motion to take this resolution from the table.

The PRESIDENT—The Chair does not understand it was tabled by a vote.

Mr. W. C. BROWN—It was tabled on my motion.

The question was then put on the motion of Mr. Barto, to take up the resolution, and it was declared carried.

Mr. McDONALD—I move that the resolution be referred to the Committee on Education and the funds relating thereto. In regard to that I have this to say: Yesterday I met the Superintendent of Public Instruction, and he stated to me that to get the information required by the resolution would take at least six months; that it required a reference to every school-district and every town clerk's office; that it was not in his office at all, and he could not furnish it. I therefore move the reference to the Committee on Education, in order that we may see whether the statement be correct. They can go to the superintendent and see what they can get from him, and whatever information the gentleman from Tompkins [Mr. Barto] can get, I am very desirous and willing he should have, but I object to these continual resolutions for information about which we know nothing. You will find by a reference to the clerk's desk that a great many accounts are returned to this Convention for the information we have got. How much it amounts to I do not know. How many county clerks have sent in bills I do not know. It may be a question whether the information is worth the cost. If this resolution goes out it compels the Superintendent of Public Instruction to send to the various towns and school-districts, and by the time he gets the information it may be that we will have adjourned, and then the information will do us no good. I am not opposed to any information that can be obtained where the cost is not greater than the benefit that may accrue, and for the purpose of finding out whether we can get this information at all in time to do any good, and second, what it will cost, I move the reference that I do.

Mr. CURTIS—I hope this reference will not be made by the Convention. The information sought by the gentleman from Tompkins [Mr. Barto] will undoubtedly employ the Superintendent of the Department of Instruction for more than a year. There is no doubt whatever, but what the gentleman from Ontario [Mr. McDonald] states, is the case, I therefore, hope sir, that the resolution will be referred to the department which is alone in possession of the information, and that that department will report directly to the Convention,

and I trust the question will not be referred to the Committee on Education.

Mr. BARTO — If the Superintendent of Public Instruction reports to this Convention that he is unable to furnish the information required I am content, but I certainly think the resolution ought to go to him, that he may send us a report if he possibly can; if not let him state the reasons why he cannot give the information.

Mr. FERRY — If pertinent to this inquiry I will state what is perhaps unknown to many members of this Convention, that bills are accumulating every day, to be provided for by this Convention, from various clerks and other officers throughout the State, who have performed labor in response to inquiries similar to the one in question. I merely make the suggestion without deciding in this case whether the information is proper or not, but I think it would be well that the Convention should know what consequence will follow this action, and I would submit it generally to the consideration of the member himself who moved this resolution, whether the information sought for would be worth the expense incurred.

Mr. WEED — I had supposed, Mr. President, that the educational interests of this State were of some importance—so important that an anticipated cost of a few dollars for information, would not deter this Convention from getting it for their own information in judging upon this question. It seems to me that the members of this Convention would not and cannot take into consideration such a thought. Every member upon this floor should understand and be informed of many of the facts asked for by this resolution. The opposition made by the gentleman from Ontario [Mr. McDonald] does not seem to me to be sound, for the reason that the last resolution of this series asks the superintendent to report how long it would take him to furnish what information he has at his own office. It seems to me when we get that report it will be time enough to give the few dollars called for. If the facts desired, will take so much time in collecting them that they will not be here to answer the purpose desired, then, it will be time enough for us to say we do not wish them. It seems to me that the information asked for here should be given by the Superintendent of Public Instruction, and I do not believe that that officer is desirous of hiding from the members of this Convention the statistics or the facts connected with his office. If he is (and I say again I do not believe he is), it would be only a greater reason for our calling for them and insisting upon them.

Mr. W. C. BROWN — The resolution which we have under consideration does not limit the Superintendent of Public Instruction for giving us simply the amount of information which he can find in his own office, but it requires him to get that information in the best way he can without any limit of expense, and from all sources in the State, and the Legislature will, of course, be called upon for an appropriation to pay the expenses. Now, I do not desire to prevent any information being obtained for the use of this Convention, which any member of the Convention deems important,

but I would like to limit it to some extent, and I would offer, therefore, this amendment to be added at the end of the resolution, "or so much of said information as can be obtained by an examination of the records in his office, in the Comptroller's office, and in the other public offices of the city of Albany." If the gentleman wants the resolution passed with that addition, I am willing to go so far: I think we ought not to go further than this without further consideration.

Mr. McDONALD — If the gentleman from Tompkins [Mr. Barto] will accept the amendment I will withdraw my motion.

Mr. BARTO — I cannot accept the amendment.

Mr. McDONALD — I then insist on my motion.

Mr. KINNEY — I cannot see any propriety in referring this resolution to the Committee on Education. It seems to me such a reference will do no good. The Committee on Education can give us no information; then, why refer it to that committee? If the inquiry is an improper one then let us vote down the resolution but not evade it, in this way by referring it to a committee which has not in its possession any of the subject-matters we are inquiring for. I do not propose to discuss the propriety of the inquiry at all, but simply the propriety of its reference to the Committee on Education, which seems to me to be very improper indeed.

Mr. CLINTON — As some allusion has been made to the action of the Superintendent of Public Instruction in reference to this resolution, I think it proper for me to remark that the superintendent is a frank, plain spoken, thorough going man, that he is, in my judgment, a good officer, and I have no doubt that he will take pleasure in furnishing this Convention with any and every information which it is within his power to afford. I think sir, that with reference to this very resolution, he remarked to me the other day, that its call for information extended over a period of time so great that there was no record in his office from which he could draw the material for an answer, and he expressed also his desire (I think that is not too strong a word), to furnish to the Convention the information asked for by this resolution, which it was within his power to furnish. It is also said that it will take six months or a year for him to collect, from sources scattered all over the State, the substance of this information. It may be so, and I take the liberty of suggesting that it would perhaps be proper for us in the Convention, to request him to furnish all the information called for by the resolution which he can furnish authentically, within some limited time, be it a month or be it two months. That is my impression with reference to this matter, and I am also satisfied, from conversation with my friend the Chairman of the Committee on Education that it is of no use whatever, and will result in no good to refer it to that committee. My impression is, that, if we adopt this resolution at all, we had better adopt it with the amendment which I have suggested, and refer it directly to the superintendent.

Mr. McDONALD — In making this motion I have simply done what I think ought to have been done in a great many other cases. It is



easy enough for an individual, who is ignorant of any fact, to get up and ask this Convention to authorize investigation and order certain information, that he may wish to have. That information may be nearly or very easily within his reach, and yet the order for this same information may cost this State a great many thousand dollars. I understand from clerks in counties where such orders have been made, that in my own county it would cost \$300 and in the county of Erie it would cost \$1,900 (I am now speaking only from information), and in other counties to about the same amount. As the Chairman on the Committee on Contingent Expenses [Mr. Ferry] has told you, these bills have already begun to arrive. We are getting the first installment, and here only two or three days ago we refused to give to the reporters who are as much entitled to it as anybody can be, a certain amount of stationery, to the amount of thirty dollars each, because we had not the power. Shall we go into the principle of stopping at the spigot, and letting out at the bung-hole? Is that the principle the gentleman wants to pursue? I am not in favor of that principle. I am in favor of every kind of information that can be obtained, which is worth the cost, and I shall suppose that any information is worth the cost until it is proven to the contrary. I have made this motion simply from the conviction that this action has already been too long delayed. The gentleman from Richmond [Mr. Curtis] says the Convention can go to the Superintendent of Public Instruction and inquire for themselves. I think his room would be quite full when we all got there. I propose that we go there in the form and person of a committee, and to find out whether he can furnish us this information in time to do us any good; and I am in favor of all the information he will be able to give us. The amendment of the gentleman from St. Lawrence [Mr. W. C. Brown] will effect the same object by its limitation, as by it the Superintendent of Public Instruction is only to furnish what can be found in the various public offices, in the various departments we have in the city of Albany, but the gentleman from Tompkins [Mr. Barto] is unwilling to accept it, and that is the only reason I have for being unwilling to yield; but as a vote on the amendment offered by the gentleman from St. Lawrence, will effect the same object and will allow the Convention to pass upon the question which I intend to raise and will only require the superintendent to furnish such information as can be obtained in the city of Albany, and in order to bring this thing to a test, I will withdraw my motion and let the Convention come directly to the question on the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown].

Mr. W. C. BROWN.—I have not the resolution before me, and I don't know precisely how it ends. I will offer my amendment so it will read in this way: "Or so much of said information as can be obtained by an examination of the records in the office of the Superintendent of Public Instruction, in the Comptroller's office, and in other public offices in the city of Albany." I understand that a very small portion of the information required by the resolution can be obtained

in the office of the Superintendent of Public Instruction, and another, and larger portion can be obtained from the Comptroller's office, and from the office of the superintendent of schools in the city of Albany. A very small part of the information called for can be obtained in the public offices of the city of Albany.

Mr. BARTO.—I am very much surprised that any gentleman in the Convention should oppose my resolution, asking information of the Superintendent of Public Instruction. I am satisfied that there is nothing asked for in the resolution that he cannot answer in a short time; and I am informed by those better acquainted with the departments than I, that an active clerk can collect all the information in some ten or twenty days. As to the importance of the information, I need only say that the department is one upon which the Legislature has conferred more power than any other State office. And that the Legislature is aggregating to this department more and more power until it is about to obtain control over the entire educational interests of the State. Is it right to have all this despotic power conferred upon a single State officer, a mere creature of the legislature, without any inquiry that will show to us its working and efficiency. Propositions are made here to discontinue the office and return the duties of the office to the Secretary of State from whom it was taken. Is it right that the millions raised every year by taxation should go through this department and no inquiry made as to whether it is doing the good it is claimed. How are we to base our action without information? How can we know what to do without questions are answered showing what has been and what has not been accomplished. I hope the Convention will send the resolution to the Superintendent of Public Instruction. If he is unable to answer it in time to do us any good let him say so—let him state what he can give us and what he cannot. But let the resolution just as it is drawn go to him, and after his answer the Convention can modify the inquiry if it deems best.

Mr. CONGER.—I wish to give the reasons very briefly, why I favor the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown]. If the gentleman who offered this resolution, or any other gentleman in this Convention, would refer to the records of the State and show that there had ever been prepared any series of tables starting with the year 1840, giving the average, which is asked here, in two important particulars, first, the ratio of taxation to the whole number of children entitled to attend the common schools in each year since 1840, next the ratio of taxation to the number actually in attendance each year since 1840,—I say, if it could be shown that any such calculation had ever been prepared, or if any such tabulation had been made and printed for the benefit of the State, then I concede to the gentleman who introduced this resolution that it would be very easy for the Superintendent of Public Education to complete that calculation, and to give the average during the years in which he may have had charge of the department. I do not know whether any such tables have ever been

prepared, or ever have been printed, but I think it would have been wise if it had been shown to this Convention, in advance of asking from the Superintendent of Public Instruction, such an onerous work as this, that there had been some attempt, by some of his predecessors, in the Secretary of State's office, to commence the work which he might be properly called upon to finish. When you ask the Auditor of the Canal Department to furnish you statistics, going back to the year 1820, it is a very easy matter for him to send to this Convention a copy of the work which has already been prepared and probably one hundred times printed for the information of the people of this State. But in this call it is entirely new and I think it is rather ungenerous for the Convention to press upon the Superintendent of Public Instruction, an inquiry of this magnitude. To be sure, he may send in his reply, and say that he has no records in his office by which he can go back to 1840, and he will be able to tell you, as no doubt the truth is, that for many years there was no such thing as any distinction between the children entitled to attend school, and the number of children actually in school and there is no possibility of giving you the ratio of the average taxation as to those numbers, in the year 1840. In saying so much I hope the gentleman who introduced this resolution will not imagine for a moment that I am opposed to the inquiry, but after the information from the Superintendent of Public Instruction, that it would be impossible within anything like a month, to furnish to the Convention such a mass of information as this, it seems to me to be reasonable and right in this Convention, at least to make some modification of a resolution of such vast scope and sweep, and I think this amendment is very proper as a matter of public duty and public interest, and if we are to get any information at all, we should get it within a reasonable time, so that it may come before the Committee on Education in time to be properly digested, and when the opinion is expressed by my honorable friend who introduced this resolution [Mr. Barto] that the Superintendent of Public Instruction is clothed with so much power by a recent legislature, that we therefore should weight his shoulders with the onerous duty of obtaining information from all these offices, I think it is rather adding unnecessary labors to his already multiplied duties. I therefore desire briefly to explain why I think the Convention should exercise a reasonable courtesy to a State officer situated as this officer is, and not leave the matter in the form of an imperative demand for so much impossible and impracticable information, but leave him to give us all he has in his power to give from the documents within his command.

Mr. LARREMORE—One of the objections urged against the adoption of this resolution, seems to be, that it will involve the expenditure of money to get the required information. I desire to call the attention of the gentleman from Otsego [Mr. Ferry] to a provision in the act authorizing this Convention to assemble: "and all public officers, boards and commissions shall furnish such Convention with all such informa-

tion, papers, statements, books or other public documents in their possession, as the said Convention shall order or require for its use, from time to time, while in session." I desire this information, as a member of the Committee on Education, so far as the Superintendent of Public Instruction can furnish it. We ought to know how much our public education costs us, and if the Convention does require an impossibility from the officer spoken of, in calling for any information he has not in his possession, he can reply he cannot get it, and he can state his reasons, and that, I understand, is the purport of the resolution.

Mr. FERRY—I understand that the clause which the gentleman has read refers more particularly to those officers who have salaried offices. I suppose that this clause is drawn with reference to the public officers throughout the State, and especially those who are paid by a salary. I confess, I did not apprehend there was to be any charges following inquiries made throughout the State, especially from the several county clerks, etc., but I find that the charges are sought to be upheld in this way. Where an inquiry was made from any public officer in the State, where the office is one that is paid by a salary, for them to furnish information in their office, they would not attempt to make any charge. But it is said they are obliged to send abroad to others to procure the information, and various searches have to be made, and the clerks claim compensation for making these searches; bills are already sent in here for payment, and we shall have to pass upon this matter. I do not wish to decide, I am not prepared to decide whether this information is necessary or not. I simply state this information for the benefit of all the members of the Convention that they may judge what is better to do under the circumstances.

Mr. LARREMORE—I desire to ask the gentleman from Otsego, [Mr. Ferry] whether the Superintendent of Public Instruction is not a public officer, and whether his salary is not paid from the public treasury so as to bring him within the purview of this section.

Mr. FERRY—I supposed I had distinctly stated that so far as the Superintendent of Public Instruction had it in his power to furnish information himself, no charge would be made, but if he has to send throughout the State to various other officers or individuals, then those persons will bring their claims against the Convention.

Mr. ALVORD—I think sir, there is a very easy way in which this whole question can be settled without objection from any member of the Convention. I move to amend the original resolution by inserting after the word "Superintendent" last occurring, the words "before he proceeds to discharge the duty required by this resolution."

Mr. BARTO—I accept that amendment.

The CHAIR announced that the question was upon the pending amendment offered by Mr. W. C. Brown.

Mr. W. C. BROWN—I will accept the amendment offered by the gentleman from Onondaga [Mr. Alvord].

The CHAIR announced the question to be upon the resolution as amended.

Mr. McDONALD — I move to amend the resolution further by adding at the end of the resolution the words, "and what portion of the information asked for can be obtained from the public officers of the State in this city, and what portion he will be compelled to obtain by inquiry from other officers, and how much will be the probable cost of obtaining such information from such other public officers not in this city."

Mr. BARTO — I accept that amendment also.

The question was then put upon the resolution as amended, and it was declared adopted.

Mr. DEVELIN offered the following resolution:

*Resolved*, That the comptroller of the city of New York be requested to furnish this Convention with a statement of the amounts paid by him or his predecessors in office, to charitable institutions including juvenile asylums, and houses of refuge since the year 1847, with the names of the institutions respectively, to which such amounts have been paid and the sum paid to each.

Which was laid over under the rule.

Mr. STRATTON offered the following resolution.

*Resolved*, That the comptroller of the city of New York, be, and he is hereby instructed, to make full report to this Convention of the net sums annually received from the several sources herein enumerated, and applied through the sinking fund for the redemption of the city debt during the years from 1847 to 1866, inclusive; and a statement showing the expenses incurred in each of said years in granting such licenses, collecting such fees, and in legal efforts to enforce payment or collect penalties for non-compliance to law or ordinance in each of such cases; whether such expenses were allowed by the mayor and common council of the city, or by the board of supervisors of the county, namely:

1. For licenses to pawnbrokers, and to dealers in second-hand furniture, metals and clothes.
2. For licenses for hackney coaches and drivers.
3. For fees of market privileges and market rents.
4. For mayoralty fees.
5. For fines and penalties.
6. For fees and fines collected by clerks of courts.
7. For tavern and excise licenses.

Which was laid over under the rule.

Mr. BELL offered the following resolution.

*Resolved*, That the Committee on State Prisons, etc., be authorized to send for persons and papers to enable them to understand more fully the operations and abuses of the prison system, that suitable remedies may be provided by this Convention.

Which was adopted.

Mr. DUGANNE offered the following resolution:

*Resolved*, That all laws relating to the excise on intoxicating drinks, and upon the regulation or observance of holidays of the week, month or year, shall be general in their provisions, and equally operative throughout the State.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BELL called up the resolution offered by himself, as follows:

*Resolved*, That pending the discussion of the report of the Committee on Suffrage, etc., in the

Committee of the Whole, the Convention will hold evening sessions, commencing at 7½ o'clock.

Mr. ALVORD — I move that, for the present, that resolution do lie on the table.

Mr. BELL — On that I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Alvord, to lay the resolution on the table, and it was lost by the following vote:

*Ayes*—Messrs. C. L. Allen, N. M. Allen, Alvord, Armstrong, Axtell, Baker, Barnard, Barto, Bowen, Cassidy, Champlain, Clark, Clinton, Cochran, Colahan, Comstock, Corning, Curtis, Daly, Develin, T. W. Dwight, Endress, Everts, Ferry, Fowler, Francis, Goodrich, Hatch, Harris, Hardenburgh, Hitchman, Kernan, Ketcham, Krum, Larremore, Law, Magee, Mattice, McDonald, Monell, More, Morris, Murphy, Opdyke, Paige, Pond, Robertson, Roy, A. D. Russell, Seymour, Schell, Schoonmaker, Schumaker, Silvester, Strong, Tappan, M. L. Townsend, S. Townsend, Van Campen, Verplanck, Weed—61.

*Noes*—Messrs. A. F. Allen, Andrews, Archer, Ballard, Barker, Beadle, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Chesebro, Church, Cooke, Duganne, C. C. Dwight, Eddy, Ely, Flagler, Folger, Frank, Gerry, Grant, Graves, Greeley, Gross, Hadley, Hale, Hammond, Hand, Hitchcock, Houston, Huntington, Hutchins, Jarvis, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Lowroy, Ludington, Merrill, Merritt, Merwin, Miller, C. E. Parker, Potter, President, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Sherman, Smith, Stratton, Tucker, Van Cott, Wakeman, Wales, Williams—71.

Mr. SHERMAN offered the following amendment to the resolution.

Add thereto the following:

"Such sessions to be for debate only in Committee of the Whole, on the subject now pending before it."

Mr. BELL — I do not see that the amendment changes the terms of the resolution, which were to confine the proposed evening session to the discussion of the report of the Committee on the Right of Suffrage, and under which, should we reach the termination of this debate this afternoon, the resolution would be inoperative; but as the amendment does not alter the terms of the resolution, I will accept it.

Mr. ALVORD — The reason of my moving that the resolution be laid on the table was for the purpose of avoiding any debate in regard to the question. It seems to me if gentlemen will reflect for a moment on the position we occupy in reference to our business here, they will not now vote for this resolution. Whenever any of the committees of this Convention, which are charged with certain duties, shall submit a report to this Convention, or shall be ready to submit a report, it will be well enough then to get through with the discussion of this question as soon as possible. But in the mean time, we are employing ourselves in the evening in discharging our duties in



committees, and are thus better engaged than we could be listening to debate on this question. It seems to me eminently proper that until the time shall arrive when there will be further business prepared for us by committees of the Convention, we should not thus hurry in regard to this matter. For this reason and this reason only, I am against evening sessions. There are quite a number of committees and sub-committees who are compelled to hold their sessions outside the sessions of this Convention and those meetings take a large amount of time. In the case of the committees, of which I am a member, my labors are very onerous, so much so that I am compelled to be employed from four o'clock in the afternoon until twelve o'clock at night, and if I am not authorized so to do, I feel that I shall have to do work of that kind in the small hours of the morning, which are, at least, required for sleep. I, therefore, hope, while I shall be perfectly willing that evening sessions may be had for proceedings in Committee of the Whole, or that our sessions shall be lengthened out when the necessity exists, that we shall not now so tie ourselves up in reference to the business we must do in committee as to pass this resolution.

Mr. KERNAN — I concur fully with what the gentleman from Onondaga [Mr. Alvord], has said. The important thing for the successful progress of this Convention, it seems to me is, that the committees shall have an opportunity to deliberate upon, and perfect the propositions which they shall report; and until they do so, we have not a great deal to do, probably, in the Convention. The committee to which I belong is holding meetings in the morning and again in the evening and they desire to continue to do so. It is a large committee and whenever any committee is ready to report, this Convention has it in its power to shorten this debate upon the subject now before it. I think that for the present, one session a day to debate the report of the Committee on the Right of Suffrage is as much as can be profitably spent. We had better allow gentlemen of the committee to meet and consult and perfect their work in the evening, as I believe they are very generally doing it.

Mr. REYNOLDS — I voted against the motion to lay the resolution of the gentleman from Jefferson [Mr. Bell] on the table, for the reason that I supposed the holding of evening sessions would tend to shorten the labors of this Convention, by hastening the conclusion of this debate. But if it is true that the evenings are required by committees, who have a large amount of labor to perform, then I shall vote against the resolution. Having myself no committee work to perform, it is entirely immaterial to me individually, but I should feel bound to vote so as to accommodate those gentlemen who hold the laboring oar in this Convention.

Mr. BELL — I do not wish, of course, to embarrass the action of committees; neither do I wish to protract our sessions beyond a necessary length. I offered this resolution for the purpose of facilitating and shortening the session of this Convention. It is stated by several committees that they will be ready to report as soon as this question shall be disposed of by the

Convention; but during the long discussions that this question is likely to elicit, they of course, see no particular object for hastening their reports. It will occur to every one, from what we have seen during the discussion on this subject, that many gentlemen are still prepared to give their views on it, and that they have, as far as can be ascertained without hearing from them, prepared themselves to speak. It was for the purpose of enabling them to express their views, and of saying here what they desire, that I proposed evening sessions. In regard to the work of the committees, sir, this resolution does not interfere with their afternoon work. It is known that most of committee work is done in the afternoon—that committees meet mainly in the morning or afternoon, and with the exception of a few sub-committees, I do not know of any that hold evening sessions. In fact, it can be so arranged that committees may do all their work in the afternoon. It must be apparent that this Convention will not hasten its labors as it might do without holding evening sessions. I hope, therefore, that the resolution may prevail and that gentlemen may have an opportunity of fully expressing themselves on this subject. The terms of the resolution only require that evening sessions should be held during the pendency of the debate on this particular question in Committee of the Whole. Whenever this debate terminates, of course, the operation of the resolution will be terminated by its own provisions. Let us try it during the further debate on this question, and then, if it does not work well, of course, we can abandon it.

Mr. GREELEY — I desire to hear the resolution read as it now stands.

The SECRETARY proceeded to read the resolution.

Mr. GREELEY — I object to the resolution, because I am satisfied from the experience we had here last night, that it will accomplish no good end. Let this body advertise that no votes will be taken, and you will not have one-half of the members present, and gentlemen will decline to speak, as a gentleman last night did, because there was a want of a quorum, and your meetings will amount to nothing. It seems to me that most of our committees might well have reported before this time. I believe many of them are ready to report, and are about to do so, and therefore I move to amend the resolution by striking out, all after the word "Resolved," and inserting in place thereof, "That from and after Monday next, this Convention will meet daily at 9 o'clock A. M." I think it would be far better to have our debates in the morning, so that they may be reported and printed in the papers of the next morning, and that would give us time in the evening for committees. I trust most of the committees will report by next Monday, except one or two of the most important; and by meeting then at nine o'clock we can accomplish a good day's work, and not merely in talking but voting.

Mr. TAPPEN — I am at present opposed to any action at this Convention looking toward the holding of any extra sessions during the day or evening. I have found that my most profitable hours have been spent in the performance of com-



mittee work. It is there that we are obliged to learn the details of the business for which we are assembled. There we are to become familiar with the features of the institutions of this State upon which this Convention is to pass, and judging from the fate that seems to have met the report of the Committee on the Right of Suffrage, it seems to me that other standing committees had better take some time in studying the subjects intrusted to them. I judge from the debate which has been had in this Convention on the report of that committee, that the committee hurried through with the business instead of properly considering it. Therefore, I hope this Convention will take abundant time for the performance of its duties in committees, and for that reason, I am opposed for the present to any meeting of the Convention earlier than 11 o'clock.

Mr. BARTO—I move to amend the amendment of the gentleman from Westchester [Mr. Greeley], by substituting the hour of ten o'clock instead of nine.

The question was then put on the amendment of Mr. Barto, and it was declared lost.

The question was then put on the substitute offered by Mr. Greeley, and it was declared lost.

Mr. SILVESTER—I am very much in favor of expediting the business of this Convention, and for that reason I voted to lay the resolution of the gentleman from Jefferson [Mr. Bell] on the table. I understand the fact to be, as was stated by the gentleman from Onondaga [Mr. Alvord], that very many committees are occupied very laboriously in the discharge of their duties, and that the time which can be most profitably occupied by them is in the evening. If we intrench upon that time, and force them to take other hours for the discharge of these duties, it will inevitably result in the postponement of their reports to a later day than the day that their reports could be presented if they can have the evenings to perform their work. I trust, sir, that the resolution will not be adopted, and that our sessions will remain as they have done until some of the committees are ready to report and then I am willing for one, as a member of the Convention, to commence our sessions in the morning at nine o'clock or ten o'clock, and continue until three, and to have an evening session as well, if necessary. But as long as there is no report from any other committee before the Convention, to be considered, it seems to me that the plan of holding evening sessions will only be a premium upon additional speech making.

Mr. CASE—I offer the following amendment: Strike out "half-past seven o'clock" and insert "four o'clock."

Mr. TAPPEN—I move to lay the whole subject on the table.

Mr. BELL—I rise to a point of order. Is it now in order to move to lay on the table after the vote having been taken?

The PRESIDENT—The Chair understands it to be a different proposition.

The question was then put on the motion of Mr. Tappen, and it was declared carried.

Mr. KRUM offered the following resolution:

*Resolved*, That the State be divided into forty-three assembly districts, as near as may be, equal

in population, not dividing counties, in each of which three members of assembly having the largest number of votes shall be declared elected, but no elector shall vote for more than two members; the Legislature to provide by law for the case of a tie between the two highest among the minority.

Which was referred to the Committee on the Legislature, its Organization, etc.

The Convention then resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the chair.

The CHAIRMAN announced the pending question to be on the substitute offered by Mr. Murphy to the substitute offered by Mr. C. C. Dwight, which had been accepted by Mr. Folger in lieu of the amendment offered by him.

Mr. GERRY—Mr. Chairman—

The CHAIRMAN—The gentleman from Clinton [Mr. Axtell] has the floor.

Mr. AXTELL—I propose to discuss very briefly the question which is before this house on the amendment of the gentleman from Kings [Mr. Murphy]. I have thought that this discussion has been forced upon us prematurely, with all due respect to the gentleman, that it was an untimely amendment—the discussion of the proposition of submitting something before we had anything to submit. I am, however, against the amendment for this reason; first, because I wish this question closed. I wish this question in regard to the rights and privileges of the negro closed. It has been a subject of discussion for many years. The distinguished gentleman who was on the floor of this House by the courtesy of the Convention the other day [Chief Justice Chase], remarked to me, while the gentleman from Kings was advocating his anti-democratic proposition that twenty-two years ago he advocated the proposition of admitting negroes to the elective franchise on the same terms with the white man. Twenty-two years have rolled by with all their mighty events, and still this question in one of its forms and aspects is before us. If this Convention shall strike the distinction of color from the Constitution, if the members of this Convention of all parties, shall say, to-day, that this proposition shall go down to the people in the body of the Constitution, the question is closed. There will be no further discussion of the subject of negro rights and negro privileges in this State. Are gentlemen willing to do this? There has been a vast amount of discussion that I have heard by gentlemen of that political faith, and a frequent expression of their wish and desire that this subject should be closed. Now, I ask them to show their sincerity in this matter. I assume that they are sincere, and do wish the question closed. The gentleman must know that if this proposition is placed in the body of the Constitution, and the proposition of the gentleman from Kings [Mr. Murphy] does not prevail, and if it does not prevail by the common consent of all parties there will be no further political issue on this question. I am in favor then of placing this proposition in the body of the Constitution, and against the amendment of the gentleman from

Kings, because I want the question closed. I wish it taken from party issues. I wish that it be not confused by party issues. I wish that it be not confused by a separate submission. Who does not know that this proposition of separately submitting this question tends directly to confuse the whole subject. Gentlemen have stated here that a separate submission would relieve the subject from its embarrassments, and would place it distinctly before the people. But such is not the fact. That may be their theory. Sir, what is this question, this question that is to go to the people, if the proposition of the gentleman from Kings [Mr. Murphy] prevails? What is it? It is a question whether the negro shall be relieved from the odious distinction of the property qualification, and whether he shall be admitted to the exercise of the elective franchise on the same terms as the white man. It is not a question of admitting the negro to the elective franchise. That question is already settled, and has been settled, too, by the vote of the gentleman from Kings [Mr. Murphy] himself, for I have no doubt that he voted for the Constitution of 1846, and that he recognized the right of the negro to participate in the elective franchise. The question was settled long ago, not only by the vote of the gentleman from Kings, but before that day. Negroes have been admitted to the exercise of the elective franchise ever since we have been a State. But though that question is settled, who does not know that another question would be raised, that those gentlemen would go before their constituents with the cry that we were proposing to admit negroes to the exercise of the elective franchise. The gentleman himself has been confused in regard to the subject. He proposed an amendment in regard to this property qualification—an amendment which proposes to separately submit to the people the question of retaining in the Constitution an anti-democratic distinction, and then he goes off into a discussion of the subject of the inferiority of the negro—and the general subject of whether the negro should be admitted to the exercise of the elective franchise. If that gentleman, with all the acuteness of his intellect, and his keenness of perception is confused, what can be expected of those of us who are common people, but that we shall be confused? And so in regard to the gentleman from Rensselaer [Mr. Seymour] who, on this same proposition goes off into a discussion of the terrible effects that are to be brought on society by admitting negroes to the elective franchise in the Southern States, and also in regard to the idea of social equality as did the gentleman from Kings [Mr. Murphy]. These are the issues that will be placed before the people instead of the real issues, and here in a paper that has been laid on our desks to-day by the State Rights Association there is the same stale putting forth of this idea that we are proposing a new doctrine; that we are proposing to enfranchise the negro for the first time; that we are proposing to bring him into a condition of social equality. We say, then, that we oppose this amendment because it would confuse the people and tend to perpetuate these party prejudices and party strifes that have

been injurious, to some extent, to the interests of the people of this State. Another reason why I am opposed to this amendment or why I am in favor of the converse proposition of this amendment is, that if this question is submitted to the people in the Constitution the proposition will certainly be carried. Is not that a good reason?—it will certainly be carried. It will not place in jeopardy any other interest, but the Constitution will be carried with this in it. The learned gentleman from Onondaga [Mr. Comstock] the other day spoke in favor of this amendment, and the only salient point in his argument was a fact connected with the submission of the Constitution of Massachusetts to the people, in which he showed conclusively that the idea of separate submission is inconsistent ordinarily with the triumph of any proposition; The Constitution of Massachusetts was submitted in nine propositions; but every one of them was defeated. I ask if that is not an argument against separate submission? for there were undoubtedly some good propositions embraced in those nine propositions. Is not that a good argument why we should not make a separate submission of this proposition? We advocate this proposition because we think it ought to be carried, and we mean to give it the best possible chance of success. As I have said we want this question settled; we desire that the people act in the bestowment of the elective franchise, not upon a whim or a prejudice, but upon a great general principle, and that great principle the principle that has been acknowledged, with this exception, by those who act with the gentleman from Kings, as well as by those with whom I act—the principle of manhood suffrage, the principle of equal rights. I proposed a question to the gentleman [Mr. Nelson] who was discussing this subject the other day as to whether the people should be governed by a whim or a prejudice or by a great general principle in conferring the right to exercise the elective franchise, and he promised to answer it, but he really did not. However, I suppose that any gentleman will admit that the people should be governed in their political action by great general principles instead of prejudices or whims. But in the argument of the gentleman from Dutchess [Mr. Nelson], and in the arguments of all the gentlemen who have spoken in support of this amendment; in the arguments that have been made against extending the elective franchise, the only principle that has been advanced is the rule, or the whim if you please to call it so, requiring two hundred and fifty dollars to be in the possession of a colored man before he should be permitted to vote. The great general principle is this: Two hundred and fifty dollars in real estate, and the colored man is entitled to vote. This is the great general principle. Now, we propose to settle this question on the great general principle of equal rights, on the right of a man to vote, because he is a man. Now, perhaps, this may be said to be a point of honor—we admit that it is a point of honor with us to place this in the Constitution. But it is a point of honor which is founded upon our belief in a great general principle, and not upon a prejudice. The gentleman from Rensselaer [Mr. Seymour] told us the other day that there were higher

questions than this question; far higher and broader in their range, and yet, sir, I do not know of any question higher than the rights of citizens. I do not know of any question higher than the question of the rights of the men who obey the government and maintain the government, and are a part of the body politic. The gentleman at the same time showed his sensitiveness with regard to the rights of another class of citizens. He told us that if the rights of one man of a certain class were placed in jeopardy, or if we were by our action here to take away the rights of one man of a certain class, he would vote against the whole action of the Convention in every proposition of the Constitution. That, I suppose, is a point of honor with him. He believes in the right of the poor man, he tells us, and he believes in the right of a certain class that have not yet acquired full citizenship, and rather than the rights of one of those persons should be sacrificed, he says that he would live one hundred years under the present Constitution, and oppose all the great beneficent reforms that we hope to inaugurate in this Constitutional Convention; still, sir, I think that the rights of one class of citizens are equally to be respected with the rights of those who have not yet become citizens. We do not propose, and have not proposed, to make this a party question. The gentleman from Kings [Mr. Murphy], the other day said, referring to myself and those who act with me, that the gentleman seemed disposed to make this a party question, but we do not propose to make it a party question. As I have already said we desire to take it from partisan associations and send it before the people with a fair chance to succeed, and to send it before them in such a way that no partisan issue can be raised upon it. Therefore, we are opposed to the proposition of the gentleman from Kings [Mr. Murphy]. It seems to me there has been a party question raised. I have thought that when this amendment was first proposed it was simply a graceful retiring from the contest, that it was *sop* to *Cerebus* or a tub to the whale, owing to the fact that these gentlemen in their political associations in other days, have been connected with this question, and that a large amount of their political capital has been invested in it. I supposed that simply out of respect to former associations and former prejudices, they had proposed and supported this amendment. But, sir, it seems to me that there is an attempt to make a party issue; to make a party issue on this single proposition of sending this question to the people separately from the main body of the Constitution. With all due deference to the gentlemen it strikes me that that is a narrow platform, a narrow plank, a rotten plank if you please to call it. Has it come to this that a great party with its grand historical associations, and its heritage of illustrious names is reduced to stand upon this narrow platform, of the submission of the question of property qualification, of the possession of two hundred and fifty dollars of freehold by a negro in order to entitle him to vote, to the people. That is their platform. Why then they will recite their political creed in this wise, and come before the people with their creed thus

recited. I believe that the negro plus two hundred and fifty dollars of real estate is equal to the white man in political algebra; I believe that a negro plus two hundred and fifty dollars in real estate is a positive and not a negative quantity in the political equation. Is that the proposition? That is the proposition substantially. That is substantially the platform which they make. Has it come to this, that this grand old party, connected with the history of this State, and having an honorable record on most questions, is reduced to stand upon so narrow a plank as that? I believe that a negro man plus two hundred and fifty dollars in real estate—it must be in real estate—he may have a million, or as much as the national debt amounts to in his pocket, but if he has it not in real estate he is a negative quantity—I believe that a negro plus two hundred and fifty dollars in real estate is a positive quantity in the political equation. I am opposed to this amendment, it having taken on this party aspect, for the reason that this gentleman, and those who act with him outside of this Convention, are in favor of it, and that in itself is to me a good reason. It is a good maxim in war never to do what your enemies want you to do, and always to do what they do not want you to do, and this is one reason why I am opposed to this amendment. They want this separate submission, and why? Do they desire that the question should be separately submitted, for the purpose of carrying the proposition? Do they desire that it should be separately submitted so that it can be carried by an overwhelming vote? Is that the purpose? How many of these gentlemen upon this floor will vote for it if it is separately submitted, after it shall be sent down to the people, or up to the people as a gentleman said the other day? Certainly not the gentleman from Kings [Mr. Murphy], because he has already told us that he is opposed to the voting of negroes whether with property or without property, although he undoubtedly voted for our present Constitution with the provision in it permitting negroes to vote having a property qualification. The gentleman from Kings [Mr. Murphy], and most of the gentlemen on this floor who are advocating his amendment, will vote against extending the elective franchise to the colored man equally with the white, when the question goes to the people, if it shall go as a separate proposition, a few of them, however, will probably vote for it. But they will vote for it in any event. Do they advocate a separate submission out of respect to the people? The question is to be submitted to the people in any case. It is to be submitted to the people with the body of the Constitution, so that it does not argue any more respect for the will of the people to ask for a separate submission than it does to submit it in the body of the Constitution. I take it, then, that these gentlemen favor this amendment because they wish to defeat the purpose we are aiming at in endeavoring to strike the distinction of color from the Constitution. I trust, sir, that this amendment will not prevail; that there will be made a Constitution so good, that there will be a Constitution with provisions so wise that these gentlemen, by their own judgment, will be compelled to forego what-



ever prejudices that may have had, and to vote for it as submitted. I trust that the Constitution will be made so wise in its provisions that no gentleman who has any regard for his reputation, or for his record, will be found voting against the Constitution merely because of this old prejudice in regard to color. I have thought, as I have already said, that this amendment was merely a way of gracefully retiring, but by the course of this debate I have been led rather to the conclusion that this is the last spiteful flourish of the mob in the hands of the wrinkled, withered, toothless and powerless old hag of prejudice—the last flourish of the mob in the hands of this old dame, who has been vainly endeavoring to push back the Atlantic ocean.

Mr. GERRY—I have no intention to inflict upon this Convention an argument on the subject of the negro, his qualification for suffrage, nor his "equal" rights. I desire simply to offer a few suggestions upon the latter part of the proposed amendment of the gentleman from Kings [Mr. Murphy] in regard to a separate submission of this question to the people of the State of New York. It certainly seems to me that a very large number of the honorable gentlemen, who have exhibited, unquestionably, a great deal of ability in the speeches which they have delivered before this body, have entirely overlooked the fact that its members are not in any sense vested with legislative powers. The people of the State of New York, by selecting them, in a certain sense, as their representative men, have simply directed that they should frame an instrument to be submitted for their consideration and adoption, if they deem it expedient, which shall be unobjectionable in feature, and which clearly should not present any of the objectionable features which formerly existed, even though the objections have now, as it is said, passed away. In fact, the position which is occupied by the gentlemen of this honorable body, and who compose it, is very nearly analogous to that of a member of the legal profession who has submitted to him by his client two previous wills for revision and necessary amendment. He finds, after a very careful examination of the memoranda and the instruments, that there is a gift which has been suggested by a previous legal adviser, but which has been objected to by the client, and rejected. He finds after a careful examination of the memoranda that this has been the case, not once but twice, at intervals, and that on each occasion his client has signified his dissent, and has refused, even by a codicil, to alter the original instrument, which did not contain it. The question then comes up, and I leave it to those gentlemen of the Convention who have the honor to belong to the legal profession, whether, without any other specific instructions from the client, they would feel justified or authorized in inserting in the new will, in case they were to draw one, this grant or gift which had been previously objected to, and thereby subject the entire instrument when presented for execution to the disapproval and rejection, or of the client whether it would not be more expedient and proper to present the will in a form which could not be objectionable, and then to offer in a codicil as a separate amendment to it, the one objectionable feature.

Mr. SMITH—Will the gentleman allow me to ask him a question? In the case supposed, I would wish to enquire of the gentleman whether he would prepare for his client a will and a codicil at the same time and present them to him.

Mr. GERRY—If the original will was one of elaboration and certainly was unobjectionable in every other feature, and there could be no question raised about the propriety of the articles which from the memoranda were incorporated in it, and it was engrossed ready for execution, I should say it would be right, if the counsel had no other opportunity to communicate with his client, because the client could execute the will and the codicil, or either, as he saw fit and his rejection of the codicil would not as a matter of form affect the will. Now the people of the State at the time when through the agency of the Legislature they called this honorable body into being, had certainly some such view in mind; because by the act by which they expressly conferred power upon the Convention to assemble, they anticipated that some one or more of the various amendments which might be proposed to the original instrument, would be objectionable to a portion of their number, and therefore by this organic law, so to speak, they directed that the said amendments or the said Constitution shall be voted upon as a whole, or in such separate propositions as the Convention shall deem practicable, and as the Convention shall by resolution declare. In either case the Convention shall prescribe the form of the ballot, the publication of the amendments or of the Constitution, and the notice to be given of the election. In case the said amendments or parts of the said Constitution shall be voted upon separately, every person entitled to vote thereon may vote for or against any one or more of them. Clearly if there had not been some question, which like the present, has been agitating our country for a number of years, and which the people saw must unquestionably in some form come up before this body, and which if incorporated into the Constitution might defeat its adoption by the popular vote, they would not have instructed their Legislature to pass any such provision as this. Either this amendment providing for a separate submission has some significance, or it has none at all. It is either surplusage in the law, or it is an important element in it. By looking back to the instrument which has called us here together, we find instructions in reference to the subject of a separate submission, and which calls our attention to the fact that questions might arise which would require a separate submission. Can it be urged that this one single question of negro suffrage and so called negro rights which, has excited for years and years so much interest in the nation at large, and which is now presented in one of its manifold forms, is not one of those questions which it was contemplated might and ought to be so submitted. It has been said by some honorable gentlemen of this Convention that if we submit this question separately to the people, the same argument would apply to other questions—that it might as well apply to an amendment which may be proposed in reference to the limitation and



restriction of the powers of the Legislature or changes which may be made in questions of finance. But can any of those gentlemen point to one single instance where any one of these questions, or can they refer to any other question which has such a paramount political importance, or which is of such paramount political interest to the State as the one now here presented, that has been before the people on two distinct occasions, and has been each time rejected by them. But it is claimed that there has been a great change in public opinion since either of those votes were taken, and, therefore, we risk nothing in incorporating such an amendment in the Constitution, permitting the negro to vote the same as a white citizen. I desire to answer that by looking at the question as it stands. Here is substantially the same question submitted years ago for adoption to the people twice and by them twice rejected, and a certain number of years has intervened between each submission. On each occasion it has been rejected in almost precisely the same ratio of votes cast against it. If the opinion of the people has undergone the change which is claimed by those who now ask the incorporation of this article in the body of the Constitution, then assuredly there can be no objection to permitting them to vote on it separately. But where it is already shown that they have twice rejected this very article, then the very grave question arises whether the entire labors of this Convention would not be imperiled—nay, absolutely lost in consequence of the rejection of a proposition which the people have already twice rejected. I submit to the consideration of this honorable body whether any instrument which we are about to frame, and which has cost the people of the State of New York a very large amount of money, considering the sums which they have appropriated for the expenses of the present Convention and whether our individual labors in framing this instrument should be imperiled by inserting in it a provision about which there is a grave and serious doubt. I, for one, should be willing to vote for any proposition submitting separately any question which the experience of the past has shown would necessarily or even probably jeopardize and endanger the instrument which we are about to frame, and that is the ground upon which I put my first reason for a separate submission of the question of allowing the negro the right to vote on an equality with the white man.

Mr. AXTELL—If the question were submitted separately to the vote of the people, would you vote in favor of doing away with the property qualification?

Mr. GERRY—It will depend entirely upon the way in which the proposition is submitted when the question comes before the people. I shall then make up my mind on the subject. If the negro is mentally and physically competent to vote equally with the white man, I see no just reason why he should be required to possess a property qualification as a condition precedent to his right to vote; but if not so competent I really do not see how the possession of property would endow him with intellectual ability. We are here, not as a legislative body, and whatever I

may do as an individual—as one of the people—when the question comes to be voted on, I consider is entirely different from what I may do when the question is here before us. There is another consideration which I desire to present in favor of this separate submission. The Constitution, when revised by us and reported, undoubtedly will, as shown by indications already in this Convention, effect great vital changes in the government of our cities, in regard to the powers of the Legislature and other matters, which must and will strike a vital blow at the corruption which has flooded her entire State and people. There is not a man who will be injuriously affected by provisions which we may make with this end in view, but will be opposed to any Constitution we may frame, but, of course, the incorporation in it of this proposed clause, will be by them used as a strong argument against its adoption, whereas, if it did not contain this feature no objection to it could be successfully urged by such men against the adoption of the instrument and they would have no object in opposing the separate question. The only reason why kindred propositions, when submitted separately, have been voted down, is, because the people were opposed to them, and the results of such ballot show that the number of votes which were cast against them would have been sufficient to have carried them if the people had been of that mind. There has been another objection urged by gentlemen against a separate submission, and that was the "complexity" and "convolution" of those articles, as the gentlemen from Westchester [Mr. Greeley] termed them. I can tell the gentleman that there have been almost yearly elections in this State, in the city of New York where there are six or seven different tickets voted for as many different offices, and yet there is no difficulty in electing men to those offices. And if a Constitution be submitted to the people, with the submission at the same election on a separate ballot, of the question of the extension of negro suffrage as a separate question, there will not be many men in the State who will discard their ballot for want of understanding what they are voting for. It is an insult to the intelligence of the people. The gentleman from Rensselaer [Mr. M. I. Townsend] spoke about the responsibility of this Convention, resting on what he was pleased to call the political party in this Convention which held the majority. And I have seen it stated in the newspapers that there was a political party in this Convention which held the majority, but I have looked in vain in any action which this Convention has taken to indicate the existence of the members or that political majority. There is not a vote of ayes and nays now on file with the Secretary of this Convention where, on inspection, it will not appear that gentlemen who are marked in italics are just as numerous on the side of the ayes as on the side of the noes; and there has not been such a vote taken in which the gentlemen whose names are printed in Roman are not as often found on the one side of a question as those printed in italics. Assuming the honorable gentleman [Mr. Townsend] to be a leader of the political majority to which he refers; and I

Infer that he is, not being versed in the politics of the party to which he belongs, but assuming it from the positive import of his argument which he made the other day that he was one of its leaders, I do not really see that there is anything to indicate that that political majority as such, is disposed to cast its vote either one way or the other on this question. This Convention is not, in any sense, a political body. I do not know of any exception to the statement I have made. I do not know of a single other question of a political nature that can possibly arise in reference to an amendment of the Constitution. If this Convention is governed by a political body, it certainly is a little singular that the majority of that political body has not, so far as my information goes, held a caucus since the Convention was organized. There has been throughout our sessions the same line of argument pursued by gentlemen belonging to both the Republican and Democratic parties. They have voted harmoniously side by side, for and against the incurring of expenses, in reference to the subject of canals, and even for and against the rule of the previous question. They are now in this very Committee of the Whole speaking side by side for or against the adoption of this very amendment that is now pending before the house, and the views of the gentleman from Rensselaer in regard to political responsibility, I fear, strongly resemble his historical reminiscences of the State of Massachusetts, from which he was pleased to say the other day that both his ancestors and mine came. In answer to a question proposed by me, he said:

"I came from a State that was proud to call its great democrat, who held prominent position, by—the name of my friend who has just interrupted me [Mr. Gerry], and in that State, neither then nor now, have we ever had any jealousy of the negro; and neither his ancestors nor mine have ever felt any fear that, in a fair contest, the negro would get the advantage in the race of life. Now it is a little singular that in this very State of Massachusetts in the year 1788, on the 25th day of March—after the Declaration of Independence, there was an act passed entitled "An act for suppressing and punishing of rogues, vagabonds, common beggars, and other idle, disorderly and lewd persons." That law provided as follows:

"No person being an African or negro, other than a subject of the Emperor of Morocco, or a citizen of some one of the United States (to be evidenced by a certificate from the Secretary of the State of which he shall be a citizen), shall tarry within this Commonwealth, for a longer time than two months, and upon complaint made to any justice of the peace, within this Commonwealth, that any such person has been within the same more than two months, the said justice shall order the said person to depart out of this Commonwealth, and in case that the said African or negro shall not depart as aforesaid, any justice of the peace within this Commonwealth, upon complaint and proof made that such person has continued within this Commonwealth ten days after notice given him or her to depart as aforesaid, shall commit the said person to any house of correction within the county, there to be kept to hard labor, agreeable to the rules and orders of the said house, until the

Sessions of the Peace, next to be holden within and for the said county." And this act remained upon the statute book, unrepealed, until the year 1834.

Mr. GOULD—Will the gentleman inform me what book he is reading from?

Mr. GERRY—I am reading from Mr. Moore's History of Slavery in Massachusetts, pages 228 and 231, the author being George H. Moore, who is the present Secretary of the New York State Historical Society. He has given references to the original volume being "the earliest classified edition of the 'perpetual laws of the commonwealth of Massachusetts.'" Even in 1780 the negroes were not allowed to vote, for in that year they presented a petition, in which they use this language:

"Your petitioners further show, that we apprehend ourselves to be aggrieved, in that *while we are not allowed the privilege of freemen of the State, having no vote or influence in the election of those that tax us*, yet many of our color (as is well known), have cheerfully entered the field of battle in the defense of the common cause, and that (as we conceive) against a similar exertion of power (in regard to taxation), too well known to need a recital in this place." But there was another part of the answer of the gentleman from Rensselaer in answer to my question, which seemed to be rather more forcible than it was delicate. He said,

"I said I was opposed to the mingling of the races, particularly in regard to its effect on posterity, and my friend puts that upon the ground of intermarriage. I will say to my friend [Mr. Gerry], another thing, I am opposed to that illicit concubinage practiced by that party at the South, to which my friend belongs, which has scattered a black and white posterity over the Southern States, until any field of the so-called African population, looks like a race of what are called skunk blackbirds. Sir, there is no danger of the intermingling of the race by a man who respects his own blood."

Unfortunately for the gentleman's argument, the State of Massachusetts by a law passed in 1705, Chap. 6. "for the better preventing of the spurious and mixed issue, punishes negroes and mulattoes for improper intercourse with the whites, by selling them out of the province." It is a somewhat singular fact that the State of Massachusetts as far back as the year 1705, should have set the example of "illicit concubinage" with negroes which the gentleman complains was only practiced in the southern States by the party to which he says I belong. What difficulty can there be in this Convention submitting separately any plain, deliberate, unqualified questions to the people of this State, such as the question whether the people of the State will or will not do away with the distinction of color. There would be one advantage unquestionably gained to those who favor—

Mr. AXTELL—Will the gentleman allow me to ask him one question?

Mr. GERRY—Certainly, but I would prefer the gentleman should wait till I finish this line of argument, I will then answer him with pleasure. I do not believe there will be a single ob-

jection made or a single vote given here against the question of separate submission. The advocates of negro suffrage will have the proposition presented to the people as an unanimous one, if this Convention submits it to them without objection or question, whereas, if they submit it inserted — this Constitution, no matter how vital or radical may be the changes made in the government of the State, it is, as previous history has shown at the risk of having the entire Constitution destroyed by the vote of the people. Indeed, if the principles which are here advocated by members of the republican party, and that party has a majority in the State, I, for one, am at a loss to conceive why their representatives here fear to have the proposition separately submitted to them. If, on the other hand, the body of the people are adverse to it, there is no reason to believe they will be persuaded to vote for an amendment or a Constitution which is objectionable, especially when as I have shown there are many men who will be injuriously affected by other changes, and who will undoubtedly use this powerful argument against the adoption of the Constitution, that contains this obnoxious feature—a clause which is sufficient to ruin it. It seems to me then that there is after all no valid objection to the submission of this question as a single, separate, and distinct proposition, to the people who have sent us here, and that it rests with them and not with us, whether the negro shall be allowed to vote on the same equality with the white man, and that the responsibility is not on this Convention, but on the people of the State of New York.

Mr. HALE — I would ask before I proceed to make any remarks, that the amendment now pending shall be read by the Secretary, that I may understand it.

The SECRETARY proceeded to read the amendment of Mr. Murphy.

Mr. MURPHY — Will the gentleman from Essex [Mr. Halé] give way for a moment and enable me to make a verbal correction in the substitute offered by myself.

Mr. HALE — Certainly.

Mr. MURPHY — I inadvertently made use of the word persons, instead of the word men, in the latter part of the substitute proposed by myself. I wish to correct it, so that it shall read "then all men of color shall be entitled to vote," and add to the end "subject to the other qualifications and restrictions which are imposed upon other electors."

There being no objection the amendment was allowed.

Mr. HALE — Mr. Chairman, I called for the reading of the amendment, because in looking over the debates since it was offered, as I have been deprived of the pleasure of listening to them, I thought I discovered that gentlemen were taking a pretty wide range of debate, and that the subject which was properly before the Convention, was not the one which was discussed by many of the gentlemen who have spoken. I make this remark, not with the view of criticising the course of gentlemen of the Convention, but merely to state that I shall pursue a course which in my judgment is the proper one to be taken

upon this discussion, and that is to confine myself mainly to the question raised by the amendment proposed by the gentleman from Kings. I am opposed to that amendment, but not for the reasons, however, that have been held by many gentlemen who have spoken here. I am opposed to it, because I dislike the form in which the gentleman proposes to submit this question to the people of this State. I am in favor of a separate submission. I am in favor of it as a friend of this change; and I confess that I cannot comprehend the motives which can influence gentlemen who entertain the same views I do on the main question, in opposing so strenuously as they do a proposition to give to the people of this State an opportunity to say distinctly, and without being compelled to vote upon any other question, at the same time, whether or not they will extend the elective franchise, or rather whether or not they will abolish the remaining property qualification. I say I am opposed to this amendment. The reasons for which I am opposed to it are these: this amendment proposes to embody the submission in the article of the Constitution itself. I think that is an awkward mode, and moreover. I think that is a way in which we are not authorized to submit it under the act of the Legislature by which we are here convened. By turning to the 5th section of that act, I find that it is provided that "The said amendments or Constitution shall be submitted by the Convention to the people, for their adoption or rejection, at the next general election, to be held on the Tuesday next after the first Monday of November next, and every person hereby entitled to vote for delegates may, at that election, vote on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said amendments or the said Constitution shall be voted upon as a whole, or in such separate propositions as the Convention shall deem practicable, and as the Convention shall by resolution declare" now the work of this Convention, as I understand it, is to propose a Constitution for the acceptance of the people of this State. It is not to propose to them simply a way in which they can alter the Constitution, but we are here, and it is our duty to express our opinions, and to embody our views in the Constitution to be submitted to the people, whether they will indorse those views or not. That is one reason why I am opposed to the amendment of the gentleman from Kings [Mr. Murphy]. Another is, as a friend of this measure, I am opposed to that form of this amendment because it would give the weight of the recommendation of this Convention against the proposed change. By it, as I understand it, he proposes that we enact that this old property qualification as respects men of color shall remain, and we give the people an opportunity by their votes to strike it out. My course would be just the reverse of this. I would say that we frame a Constitution which should leave this property qualification out and thus abolish the distinction which is made there between the white race and the black, and leave it to the people, if they choose to do it, to put it in again. I would leave the laboring oar where it belongs, with those who seek to retain in the



Constitution a provision which this Convention believes it right should be stricken out, with those who seek to take an exception to the proposition which we make, and say that we will, while indorsing this Constitution as a whole, strike out one of its provisions. And another reason why I am opposed to the adoption of such an amendment now is the one that has been suggested here, that this discussion is somewhat premature. We certainly cannot decide with intelligence how we will submit amendments that we propose until we decide whether we will have anything to submit or what we shall submit. I should not have participated in this discussion had not this question arisen; but as it has arisen, and gentlemen have expressed their views, and inasmuch as the views I entertain differ very essentially from those of most of those who advocate this change, I deem it proper to express those views. I propose to consider first the reasons why I am in favor of enabling the people to pass distinctly and separately upon the proposition. In doing this I shall first advert to some objections that have been made to such separate submission, and then give my affirmative reasons for my opinion, and after I have done that, I shall suggest, not for the action of this Convention, but for its consideration, a form by which, I think, all the objections, or most of them, which have been made to the form of this submission, may be obviated. The first gentleman who objected to a separate submission was the distinguished chairman of the Committee on the Right of Suffrage [Mr. Greeley]. As I find, from the newspapers—for I was not present when he made his remarks on the subject—he objected to it for reasons which I will read. He says:

"Gentlemen must be aware that such submissions tend not only to confuse, but to alienate the people. If we should go to the people with a Constitution submitted in pieces, it would almost certainly be voted down. I am opposed to all proposals for separate submissions, because, if the plan is adopted, the people will vote down the Constitution which we shall submit to them."

Here we have something which looks very much like a prophecy. The gentleman tells us that if we submit this Constitution separately, or submit a separate proposition, the people will vote it down. Sir, however great are the attainments of the gentleman [Mr. Greeley], and I do not question them, I have yet to learn that he is either a prophet or the son of a prophet, although I am aware that it is said that in many sections of the country the Journal with which his name is connected is regarded as equivalent to both the old and new Testaments; yet I have never been quite able to acquiesce in the correctness of that opinion, and I am inclined to think that the gentleman goes a little beyond the record when he says that this Constitution will fail if it is submitted separately. He states it with much positiveness and distinctness, but yet he states something that he does not know, and I take the liberty of believing that in that opinion the distinguished gentleman is mistaken. I think that if this Constitution is submitted as it ought to be—if it is submitted so as to give the people an opportunity to take what they like and

reject what they do not like, that they will act in conformity with their opinions and principles. And I have confidence in the principles of the people of this State that they will sustain this change which we shall propose to be made in regard to the property qualification of electors. Again, the distinguished gentleman [Mr. Greeley] says that the people will say "If the Convention is capable of making a Constitution, let them present one, and we are capable of deciding whether we like it or not." I would ask the gentleman if he does not think that the people are capable of saying, "We like a part of the Constitution which is proposed, but we do not like the whole of it." I have more faith in the people than the gentleman has. I believe they are capable of distinguishing between the different parts and saying, "Some provisions we like, and some provisions we do not like." It is because of my faith in the people, and because of my belief that if this question is submitted separately, it will be decided affirmatively by the people that I advocate a separate submission. The gentleman also says, that he has known of Constitutions to be submitted in this way and that they have been defeated. Admitting the statement of the gentleman, which I have no doubt is correct, although I have no information in regard to it, I am not aware that it proves anything. It shows that the people, when the questions have been submitted, have disapproved of the proposed changes. If the gentleman would produce here the questions which have been submitted, if he could make us acquainted with all the circumstances attending the submission, and could show that the people rejected Constitutions which they desired and which they should have adopted, that is one thing; but the mere fact that the people have, in cases where there has been a separate submission, sometimes rejected Constitutions, is no indication as to what will be done in this case. All this prophecy of defeat upon a separate submission, is the merest *dictum* in the world. It is not argument. It is a mere matter of opinion. If gentlemen believe as they profess to believe, and I think correctly, that the people of this State are in favor of abolishing this property qualification, which is left in our Constitution as applied to men of color, I cannot see any reason why they should raise this issue, why they should allow our opponents on this measure to place us in the false position of trying to deceive the people, or rather of trying to withhold from the people the power which belongs to them, instead of meeting the question squarely and saying we will make a distinct proposition—we will meet our opponents before the people at the polls, and as we trust, will beat them there. This question, Mr. Chairman, is one that has been considered before, and I propose to read a very brief extract from a work which I presume has been brought to the notice of all the members of this Convention—a work upon Constitutional Conventions which has certainly been prepared with a great deal of care, and which shows in it a great deal of discrimination, research and judgment. I know the author to be a gentleman of sound judgment, great learning, and eminently qualified for a work of this kind; I refer to the



work on Constitutional Conventions by Judge Jameson, of Chicago. Upon page 469, § 515, he says:

"A Constitution may be wholly new, or it may be an old one revised by adding to its material provisions. It may, also, in a hundred separate subdivisions, contain but a fourth of that number of distinct topics, or each subdivision may be substantive and independent. It is obvious that the submitting body, weighing accurately the public sense, may determine whether the whole Constitution must stand or fall as a unit, or whether some parts, being adopted, and going into effect without the rest, the new system would be adequate to the exigencies of the State, and may submit it as a whole or in parts accordingly. But it is perfectly clear that every distinct proposition, not vital to the scheme as a whole, or to some other material part, ought to be separately submitted."

Then in a note at the bottom of page 470, is a quotation from the veto message of the Council of Revision of this State, in November, 1820, in which they objected to a bill providing for submitting the Constitution, because the proposition was to submit the amendments in a mass and not in separate articles. They object to the proposed bill:

"Because the bill contemplates an amended Constitution to be submitted to the people, to be adopted or rejected *in toto*, without prescribing any mode by which a discrimination may be made between such provisions as shall be deemed salutary, and such as shall be disapproved by the judgment of the people; if the people are competent to pass upon the entire amendments, of which there can be no doubt, they are equally competent to adopt such of them as they approve, and to reject such as they disapprove; and this undoubted right of the people is the more important, if the Convention is to be called in the first instance without a previous consultation of the pure and original source of all legitimate authority."

There may be cases with regard to the separate submission of a proposition, where it would be injudicious, as in the cases referred to by this author, where the Constitution is so interwoven with various provisions that you cannot separate one from the rest without marring the symmetry of the whole. This, I submit, is the only reason which can be given for not separating every important change or proposition. There are only two objections to such submission in any case: first, the one I have suggested, that it may be a part of a comprehensive whole, which, if one part is taken out and away from the rest, will leave the others imperfect. Second, that it will lead so much into detail as to cause confusion and complexity. As to the first objection, if it ever does exist, I think it is clear it does not apply to this case. A question as to who shall be the electors of the State cannot in the nature of things, be so interwoven in this Constitution, that a decision whether the amendment which we may make on that subject shall remain in the Constitution, will affect it as a complete and entire instrument. Certainly the submission of one proposition will not lead to complexity. I am not prepared to say there will not be others,

as we have so many propositions for amendments and changes: there may be other provisions which this Convention will deem it best to submit separately to the people within certain limits, and it will be eminently proper, if the changes proposed shall be very radical and very great, that the people shall have the opportunity to pass upon them distinctly and separately. Another objection was made by the gentleman from Lewis [Mr. E. Brown] who apprehended there was danger that some might withhold their votes in favor of this change, from apathy. There is some force in this, but I think it can be entirely obviated by a proper mode of submission, and I shall suggest a plan before I get through, which, I think, if adopted will obviate any such objection. Another objection, raised by the gentleman from Onondaga [Mr. Corbett]—if it can be called an objection—to this separate submission was that it savors of cowardice and compromise. I confess, sir, I am astonished that such an objection should be made to such a submission to the people—cowardice, to call upon the people to say directly and plainly whether they will or will not retain this restriction upon the right of suffrage? "Cowardice," because we do not require the people when they say that, to reject or adopt with it the amendment which is proposed to the judiciary system, or the amendment which is proposed for a system of finance, and to vote in the same way on them as on the suffrage amendment? It seems to me, Mr. Chairman, with great respect and deference to the gentleman from Onondaga [Mr. Corbett], that if there is any cowardice, if there is any compromise, it is that which undertakes to confuse this matter, and compel the people to swallow the whole of what we give them, or to take none of it. Again, sir, my distinguished friend from Columbia [Mr. Gould] for whom I entertain the very greatest respect, made the remark according the reports in the papers, that it would be an insult to the people to submit this proposition separately. I confess I cannot see how it is an insult to the people, to say to them, "Instead of having merely the opportunity of rejecting or adopting it *all*, you may, if you choose, select out what you wish and leave the rest." We generally, as individuals, regard it as a privilege if we are allowed to pick out and choose; and it strikes me that the insult is in undertaking to crowd everything we may see fit to put into this Constitution, down the throats of the people, or else to have them reject it all. Suppose we, as very likely we may, adopt some provisions which are distasteful to the people; suppose for instance, that the system of judiciary which may be proposed should be distasteful to the people; are we to say to them: "you must adopt this system just as we have given it to you, or you cannot extend the suffrage?" As was stated by the gentleman from New York [Mr. Gerry] who preceded me, undoubtedly there are a large body of men in this State who will be injuriously affected by some amendments that are proposed to this Constitution; it is within the bounds of possibility that some distinguished gentlemen who now hold lucrative offices, will, by the action of this Convention, providing it is ratified by the people, find themselves without them. Shall we

say to those men: You cannot oppose that part of the Constitution which injuriously effects your interests, unless you will at the same time forego your wish to extend the right of suffrage—if you have any such wish? Shall we invite the hostility of these gentlemen who are interested in retaining their offices—if there are any such—as it is most likely, judging by what we see of the operation of human nature, that they will oppose this part of the Constitution by which their office is to be terminated. Shall we say to them, in order to do that, you have also got to oppose us upon this question of the extension of the rights of suffrage. Such will be the inevitable result if you say this Constitution is to be submitted as a whole, and shall not be taken up separately and distinctly. Now, having considered these objections, I propose to state very briefly some of the reasons which induce me to think this is eminently a proper matter to be submitted separately to the people. The first reason is this amendment, unlike any other, probably, that we shall propose, is one which asks the sovereign rulers of this country, the legal voters therein, to surrender a part of their power. It strikes me with great deference to those gentlemen here who have argued so eloquently and learnedly on the natural right of suffrage, that that has nothing whatever to do with this question. The fact is we are here representing certain legal voters of this State. We are sent here by their votes, and whatever our action is, it has to be passed upon by them, and unless it is approved by them, it goes for nothing. Here is an amendment by which we ask these men whom we represent here, to admit into participation with their power, a certain class which has heretofore been excluded. I am, as I said before, in favor of such surrender and of giving such participation—

Mr. AXTELL—Will the gentleman allow me to ask him a question? Is conferring the franchise upon persons, who have not hitherto exercised the franchise, a surrender of power? And, when a young man comes of age and becomes an elector, does that imply a surrender of power on the part of the other electors?

Mr. HALE—If the learned gentleman would put but one question at a time I will endeavor to answer him more clearly. I would inquire which question the gentleman wishes me to answer first?

Mr. AXTELL—I think they both involve the same principle.

Mr. HALE—I differ with the gentleman in that respect.

Mr. HAND—I wish to ask the gentleman a question. He has stated that the question of the qualities of the negro has nothing to do with this subject. Now, we propose to extend the suffrage to a class who have not hitherto enjoyed it, and we are met by the objection that they have qualities such as make it impracticable and wrong. I ask has that nothing to do with this discussion?

Mr. HALE—My answer to the gentleman from Broome [Mr. Hand], will be, that in my judgment all the remarks which have been made with regard to the race or the capacity of the colored man, on both sides, have been irrelevant to the main question. My view is that the remarks made by the

gentleman from Kings [Mr. Murphy], trying to prove that the colored race were not the proper recipients of the right of suffrage, were irrelevant, for the reason that I consider that the people of this State are estopped from denying that colored men have capacity to vote. Men of color have always been allowed to vote in this State, and the question is a question of retention, or non-retention of the property qualification, and it is for that reason I think the remarks in regard to the natural right to vote, with great deference to those distinguished gentlemen who have discussed the question, and upon the distinction between the black and white races, were irrelevant. The State of New York has always admitted this class to vote, within certain limits, as I shall proceed to show more fully presently. Then, sir, to reply a little more fully to the question of my friend from Clinton [Mr. Axtell], it is clearly a surrender of power for us who now wield the power of this State to elect its officers, to say that another class who do not wield that power, shall come in and exercise it. And it is the same in the case of the young man coming of age. But that is one of the matters settled by our present system; we have all agreed to make that surrender to those young men who are following in our footsteps when they come of age. The Constitution already in existence provides that every male citizen, when he reaches the age of twenty-one, shall come forward and take his part in administering the government; it also provides that men of color, unless possessed of this property qualification, shall not have this right. I therefore insist that it is clearly a surrender of power, where those of us who now yield this power, to tell that class which has heretofore been disqualified, to come in and wield this power equally with us. Can there be a question more eminently proper to submit to the people than this? We are sent here, and our action is to be revised by those whom the Constitution now makes the legal voters—we are of that class ourselves. We have our views in regard to it. I think a large majority of this Convention are, and certainly I myself am, strongly in favor of making this surrender, and abolishing this qualification, which now excludes this class from voting. I say it is right, and I have yet to see the argument upon this question which has, to my mind, any basis of force in it, to show it is not right, that this question which has got to be passed upon by the people, should be passed upon separately as a distinct proposition.

Mr. BECKWITH—If the gentleman will allow, I will ask him whether the property qualification is a right or wrong principle.

Mr. HALE—I have already said that I am in favor of abolishing it.

Mr. BECKWITH—Is the gentleman in favor of submitting, what he regards as wrong, to the people, to say whether it is right or not?

Mr. HALE—I will answer the gentleman from Clinton [Mr. Beckwith] in this way: We must submit this question to the people. It is not a matter of choice with us; no matter if the Constitution were as wrong as can be; no matter if it required a violation

I think the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters. I think the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters. I think the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters.

Will the gentleman allow me to say that the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters. I think the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters. I think the Convention of 1821 was a very important one, and we should not forget that it was the Convention of 1821 that made the distinction between the colored and white voters.

Mr. HALE—I would say to my friend from Onondaga [Mr. Andrews] that the Convention of 1821, having met some years before I was born, I do not consider myself especially responsible for its action, and what it should, or should not have done. I do not consider a very proper subject for discussion here. I will say further, if I have recollection right, no man of color who was a voter before 1821 was deprived of his vote by that proviso which was inserted in the Constitution then. Prior to 1821 no man was a competent voter, for member of Assembly, unless he possessed real estate of the value of fifty pounds; he must possess a freehold of that amount, or rent an estate of the value of forty shillings yearly, and in addition pay taxes. That was the provision in the Constitution of 1777. And he could not vote for Senator under that Constitution unless he was possessed of a freehold worth one hundred pounds over and above all debts and liabilities. Therefore, as I said before, the Convention of 1821 did not deprive a single man in the State of the privilege of voting. The distinction was not until then made in the Constitution between black and white men. Still the property qualification which existed prior to that Convention, would exclude from the right of voting every colored man, as well as every white man, who did not possess the required qualification. But if it had made a distinction, I would say most emphatically to the gentleman from Onondaga [Mr. Andrews] that the legal voters under that Constitution were the ones to be consulted, and it was upon their vote and their vote only, that the change could be made.

Mr. ANDREWS—I desire to ask the gentleman whether the peculiar discrimination which now exists in respect to men of color in this State, was not first inserted in the organic law of the State by the Convention of 1821, and whether, for the first time in the history of the State, that Convention did not make a discrimination between white and black electors, and their qualifications as such.

Mr. HALE—I so understand it, but I fail to see how it bears upon the question I am discuss-

ing. The question which the gentleman [Mr. Andrews] first asked me, was whether the submission of that Constitution ought not to have been made to all those who were qualified voters, and he assumed in his question that a certain class of voters were, by the operation of that Constitution excluded from voting. I answered him by stating that it ought to have been, and it was, as I understand, submitted to the duly qualified voters of the State. The gentleman is mistaken in saying that by that Constitution any person was excluded from voting, although by the terms of that Constitution a distinction, which did not before exist, was made between the two races.

Mr. ANDREWS—The point was that the party called upon to surrender the power should determine upon that question of surrender.

Mr. HALE—The question now asked by the gentleman is different from my understanding of what he asked me before. I should say in principle, that the question should not have been submitted to the colored voters only (although, as I said before, I do not consider the discussion of the duties of that Convention of 1821, as specially pertinent to the question before us), because, prior to that time, there has been no distinction whatever of races, and the question only was whether a certain measure of relief—a certain extension of the right of suffrage which was made in favor of the white man should also be extended to the black man. It was a question in which all the electors were equally interested and upon which they all should vote. I hope the gentleman [Mr. Andrews] will not understand me as expressing any approbation of the proviso which was inserted in the Constitution of 1821. If I had been consulted at that time (which by a mere oversight, I suppose was omitted) [laughter] I probably should have been opposed to the insertion of that proviso there; at least, such has been my opinion since I have entertained any on the subject. All of my argument is this; that this whole instrument, having to be submitted to the people, this is the provision of all others to be considered in deciding what portions of it, if any were to be submitted separately, because it is one, no matter what was done in 1821, by which is now proposed a surrender of power on the part of those who exercise the elective franchise. One remark further in regard to the inquiry of the gentleman from Clinton [Mr. Beckwith]. He asks whether it is right and just that there should be a property qualification. I answer him that I certainly regard the continuance of the property qualification as to the man of color, applying it to the white man, as eminently unjust, and I am in favor of abolishing it. But I have no doubt there will be many propositions made by the Convention which the gentleman from Clinton [Mr. Beckwith], himself may regard as not just and right, or which involve questions of policy and not questions of principle—questions upon which he will concede men may properly differ, and in which they will concede that no great principle is involved. I will ask him and other gentlemen whether, in case of an amendment proposed to

this Constitution of which they approve, if the Constitution should be submitted only as a whole, they will not be obliged to vote for the amendment of which they disapprove, if they vote for that which they regard as eminently right and proper. The fact of this being an amendment which he [Mr. Beckwith] regards as right and proper, does not affect the principle; and that is one reason, according to my mind, why we should be allowed to pass on this proposition distinctly and separately, without being obliged, at the same time, to vote for other measures which we may think are not right and proper. This is all I propose to say in regard to this question of the separate submission. It is a question upon which my own mind is very clear and I cannot forbear again expressing my surprise, that gentlemen for whom I entertain so high a respect and who hold the same opinions that I do, should be disposed to insist upon the submission of the whole Constitution together and object to a separate submission of any part of it. One great reason why I wish a separate submission, is because when I come to vote, as I expect by the blessing of God to do, if my life is spared, in favor of abolishing the remaining property qualification, I do not want to be compelled to vote for every proposition that this Convention in its wisdom may see fit to incorporate in the Constitution; because they may adopt something which in my judgment may be wrong.

Mr. KINNEY—I ask the gentleman if, in order to avoid the difficulty he presents of voting for propositions we disapprove, he would be in favor of referring all propositions of this Convention to the people for a separate submission, even though there were twenty of them.

Mr. HALE—That I will answer when we ascertain what the propositions are, to be submitted. But I will say this however, as there seems to be a disposition to put me through a course of catechism, that I should not be in favor of submitting twenty propositions to the people because I do not believe it would be proper and necessary that we should. My plan would be to take the leading articles of the Constitution as proposed to be amended—there would not be twenty—that would be considered vital propositions. There would not probably be more than three or four, and I would permit the people voting on this Constitution to accept them or not. And, now Mr. Chairman, I will pass to the consideration of the mode by which this submission can be made and obviate the objections which are urged to the proposition of the gentleman from Kings [Mr. Murphy], and, at the same time give every citizen in the State an opportunity to signify his acceptance of the part of the proposed Constitution without approving the whole of it. I will confine myself now to the question of the extension of the right of suffrage. What is the question? It is not, as I have stated before a question whether negroes shall be allowed to vote or whether they are competent to vote. I think the State of New York is estopped from raising that question. There has never been a time in its history when colored men have not had the right to vote. Under the Constitution of 1777, our first Constitution, there is no distinction

whatever between the races. The property qualification was required of all voters. I have already stated what it was, a smaller amount for electors of members of the Assembly and a larger amount for the Senate. That continued up to the Constitution of the State from its adoption in 1777, until the adoption of the Constitution of 1821—a period of forty-four years. The Convention of 1821 abolished the distinction between Assembly and Senate electors, whether wisely or not, I cannot say—people have different opinions in regard to that—and they abolished the property qualification, except that they required that the man of color should have the same qualification now required, and they required all voters to be tax payers or persons exempt from taxation. When the report was made by the Committee on Suffrage in the Convention of 1821, the word "white," was contained in the proposed Constitution, but Mr. Peter A. Jay of Westchester moved to strike out the word "white," and after considerable debate it was stricken out; in favor of that motion you will find recorded such names as Kent, Van Vechten, Van Buren and Elisha Williams. The report of the committee was recommitted and they afterward reported a clause containing the proviso which now exists in our present Constitution, and I think precisely in the same words, in substance, that no man of color should have the right to vote unless he had a freehold estate to the value of \$250; and after a very animated debate it was finally adopted. The word "white" was not contained in the Constitution of 1821, and it has never been contained in any Constitution since. I was somewhat surprised that my friend, from Rensselaer [Mr. Seymour], in the remarks he made on Saturday, spoke of the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight] as an amendment proposing to strike out the word "white" in the Constitution. I was surprised that a gentleman of his great intelligence and historical knowledge should speak as if there was any such word in the Constitution to be stricken out. In fact, it has never been in any Constitution of the State of New York that I have been able to find. As I said before, the Convention of 1821 retaining a partial property qualification, inserted this proviso in regard to men of color. In 1826, the question was submitted to the people as to whether the remaining property qualification as to white men should be stricken out, and the people voted by an overwhelming majority, in favor of the proposition, and since then we have had no property qualification except as to the men of color. We then come down to the Constitution of 1846. That Constitution submitted this question, substantially in the same manner as proposed in the amendment of the gentleman from Kings [Mr. Murphy]. I submit, Mr. Chairman, that this historical statement shows that it is a question which it is eminently proper to submit separately. I know it is said, though I do not attach any weight to the fact—that it has been several times submitted to the people, and they have voted it down. But circumstances have changed, and I think the people of New York entertain different views on this subject from what they did in 1860,



But, if they are submitted separately it is submitted separately it is submitted what right have we, the representatives of the people elected by the legal voters and by the act under which we exist, refused to submit our work to them for their approval whatever be our private views, to say to the people even if you don't want this amendment you shall have it, or have no constitutional return as my subject. In favor, as I am, of doing away with the property qualification still I say that it is not inconsistent with my ideas of duty and right, to say that we will deprive the people of the right to express their views separately on this question and to tell them that if their views on this question do not answer with ours, they shall not see the benefit of those other reforms and improvements which they propose to submit to them. We believe that we have a right to agree a remedy like this upon the people's suffrage to draw votes from the opinions of so many at the Convention. As I said before we were very confident that they would agree with the proposition that this property qualification should be struck out. I will not insist upon the adoption of a mode of submission but I will state what I consider a feasible plan to give every person who has his vote counted as he wishes to the adoption of the Constitution three classes of ballots. They may be simply "for the amended Constitution," or "against the amended Constitution," or "for the amended Constitution except as to the abolition of the property qualification," or "except as to the article on suffrage," or "except as to the article," or whatever exceptions the Convention in its wisdom should choose to provide for. The result of this plan would be that those who wish to preserve some parts of the old Constitution and reject amendments, would have the laboring oar. The apathy which the gentleman from Lewis [Mr. E. A. Brown] apprehends, which would prevent people voting on this suffrage question, would inure to the benefit of those to be benefited by the provision which we shall propose. The opponents of it would be obliged to have a majority of the votes—either of votes "against the amended Constitution," or of such votes added to those "for the amended Constitution except the suffrage article," in order to prevent the suffrage amendment from being adopted. I submit that that would be a fair and just proposition. Suppose there should be 800,000 votes cast in this State on this subject, 300,000 "for the amended Constitution," 300,000 "against the amended Constitution," and 200,000 "for the amended Constitution except the suffrage article," then the extension of suffrage would be defeated, and the rest of the Constitution which we frame

would stand. Suppose another class of ballot was "for the amended Constitution except the judiciary article" or any other exception, with the relative number of votes I have stated, then the suffrage provision would be carried, because with 300,000 votes for the amended Constitution and 200,000 for it except the judiciary clause (and with no other exception) would give a majority in favor of abolishing the property qualification, but would defeat the judiciary clause. In conclusion, I submit that this plan, or one substantially like it, or accomplishing the same result, is to my mind, the only one which is fair and just, and will enable the people to vote freely and intelligently upon the amendments which we shall propose.

**Mr. COLAHAN** — It is with no little diffidence I rise thus late to participate in this discussion. Originally I did not intend to say anything upon the subject, but so many extraneous matters of prejudicial effect have been referred to by my previous speakers, that I feel constrained, upon the part of my constituency, to say something in support of my position, and in support of my vote upon the amendment proposed by the honorable gentleman from Kings [Mr. Murphy].

Mr. VAN CAMPEN—I now move that the Committee rise, report progress, and ask leave to sit again.

**The CHAIRMAN**—The Chair is of the opinion that that motion cannot be made while debate is proceeding, unless the gentleman speaking will give way.

**Mr. COLAHAN**—I will give way.

The CHAIRMAN — The gentleman from Kings [Mr. Colahan], having given way, the gentleman from Cattaraugus [Mr. Van Campen], moves that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Van Campen, and it was declared carried.

Whereupon the committee rose and the President resumed the Chair in Convention.

Mr. ALVORD from the Committee of the Whole, reported that the committee had had under consideration, the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, and had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

On motion of Mr. AXTELL the Convention adjourned.

WEDNESDAY, JULY 17th, 1867.

**The Convention met at 11 o'clock A. M.**

Prayer was offered by Rev. C. D. W. BRIDGE-  
MAN.

The Journal of yesterday was read by the SECRETARY and was approved.

Mr. HUNTINGTON presented the memorial of Hon. John P. Jervis, of Rome, in reference to the management of the canals of the State.

**Which was referred to the Committee on Canals.**

Mr. GOULD presented the petition of citizens of New Lebanon, Columbia county, in favor of restraining the Legislature from making appropriations for sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GROSS presented the petition of citizens of Williamsburgh in favor of regulation of the traffic in fermented liquors and wines.

Which was referred to the Committee on Adulterated Liquors.

Mr. EDDY presented the petition of Rev. Charles Gillette, and sixty-two others, in favor of a clause in the Constitution prohibiting the granting of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BICKFORD presented the petition of Chas. D. Haynes, and thirty-four others, citizens of Henderson, Jefferson county, upon the same subject.

Which took the same reference.

Mr. STRATTON presented the petition of Rev. Dr. John Dowling, and 124 others, citizens of New York city upon the same subject.

Which took the same reference.

Mr. MERRITT from the Committee on the Organization of the Legislature, etc., submitted a report.

Mr. MERRITT—The committee sir, have decided not to report in writing, but to submit an article. They wish to reserve the right to submit a written report for the future action of the Convention.

The SECRETARY proceeded to read the report as follows:

The Committee on the Legislature, its organization and the number, apportionment, election, tenure of office, and compensation of its members, have prepared and submit the following article of the Constitution, and ask to be discharged from the further consideration of all propositions which have been referred to them by the Convention:

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly. Any elector of the State shall be eligible to the office of Senator or member of Assembly.

§ 2. The Senate shall consist of thirty-three members. The State shall be divided into eight senatorial districts. There shall be four Senators in each district.

The first district shall consist of the city and county of New York and shall be entitled to one additional Senator.

The second district shall consist of the counties of Suffolk, Queens, Kings, Richmond and Westchester.

The third district shall consist of the counties of Putnam, Rockland, Dutchess, Orange, Ulster, Greene, Columbia and Rensselaer.

The fourth district shall consist of the counties of Albany, Schenectady, Fulton, Hamilton, Saratoga, Washington, Warren, Essex, Clinton, Franklin and St. Lawrence.

The fifth district shall consist of the counties of Jefferson, Lewis, Oneida, Onondaga, Oswego, Herkimer and Montgomery.

The sixth district shall consist of the counties of Otsego, Schoharie, Delaware, Sullivan, Broome, Chenango, Madison, Cortland, Tioga, Tompkins, Chemung and Schuyler.

The seventh district shall consist of the counties of Yates, Seneca, Ontario, Cayuga, Wayne, Monroe, Livingston and Steuben.

The eighth district shall consist of the counties of Orleans, Niagara, Erie, Genesee, Wyoming, Allegany, Cattaraugus and Chautauqua. The whole Senate shall be chosen at the first election held under this Constitution; they shall classify themselves, so that one Senator in each district shall go out of office at the end of each year, and the additional Senator for the first district at the end of the fourth year. After the expiration of their terms under such classification the terms of their office shall be four years.

§ 3. An enumeration of the inhabitants of the State shall be taken, under the direction of the Legislature, in the year one thousand eight hundred and seventy-five, and at the end of every ten years thereafter; and the said districts—except the first district—shall be so altered by the Legislature at the first session after the return of every enumeration, that each district shall contain as nearly as may be an equal number of inhabitants who are citizens of the State, and shall remain unaltered until the return of another enumeration, and shall consist of contiguous territory. No county shall be divided in the formation of a senate district.

§ 4. The Assembly shall consist of one hundred and thirty-nine members who shall be chosen by counties, and shall be apportioned among the several counties of the State as nearly as may be according to the number of inhabitants thereof, who are citizens of the State, and shall hold office for one year. Each county shall be entitled to at least one member, except that the counties of Fulton and Hamilton shall elect together until the population of the county of Hamilton shall according to the ratio entitle it to a member. No new county shall be erected unless its population shall entitle it to a member. The first apportionment of members of Assembly shall be made by the Legislature, at its first session after the adoption of this Constitution, upon the enumeration of the inhabitants of this State, who are citizens thereof, made in the year one thousand eight hundred and sixty-five. A like apportionment shall be made by the Legislature at its first session, after every such enumeration. Every apportionment when made, shall remain unaltered until another enumeration shall be made.

§ 5. The members of the Legislature shall receive for their services an annual salary of one thousand dollars, and ten cents for each mile they shall travel in going to and returning from their place of meeting by the most usual route. The speaker of the Assembly shall receive an additional compensation equal to one-half of his salary as a member.

§ 6. No member of the Legislature shall be appointed to any civil office within this State by the Governor, the Governor and Senate or by the Legislature during the time for which he shall have been elected, and all such appointments and all votes given for any such member therefor shall be void. Nor shall any person being a member of Congress or holding any judicial or military office under the United States, hold a seat in the Legislature. If any person shall, after his election as a member of the Legislature, be elected to Congress or appointed to any office

and or military, under the government of the United States, in acceptance thereof, shall vacate at once.

§ 7. The elections of Senators and members of Assembly under this Constitution shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by law. The first election to be in the year one thousand eight hundred and sixty-eight. The Senators and members of Assembly who may be in office on the first day of January, one thousand eight hundred and sixty-eight, shall hold their offices until and including the thirty-first day of December of that year, and no longer.

§ 8. A majority of each House shall constitute a quorum to do business. Each House shall determine the rules of its own proceedings, and be the judge of the election returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president when the Lieutenant-Governor shall not attend as president, or shall act as Governor.

§ 9. Each House shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy. The doors of each House shall be kept open, except when the public welfare shall require secrecy. Neither House shall, without the consent of the other, adjourn for more than two days.

EDWIN A. MERRITT,

*Chairman,*

ERASTUS COOK,  
RICHARD U. SHERMAN,  
CLAUDIUS L. MONELL,  
GEORGE BARKER,  
NATHANIEL JARVIS, JR.

I concur with this report except as to the number of members of Assembly and their manner of election.  
M. H. MERWIN.

The report was laid on the table and ordered to be printed.

Mr. MERWIN, from the same committee submitted a minority report as follows:

The undersigned, one of the members of the Committee on the Legislature, its Organization, etc., in dissenting from the report of that committee, as to the number of the members of Assembly and their manner of election, presents the following as a substitute for Section 4 in that report.

§ 4. The term of office of members of the Assembly shall be one year, and their number shall be ascertained by dividing the aggregate of the population of the State, according to the last and each successive enumeration, excluding aliens, by twenty thousand, adding one additional member in case the fraction over exceeds five thousand; but such number shall never exceed two hundred and fifty. The members of Assembly shall be apportioned among the several counties of the State, by the Legislature, as nearly as may be according to the number of their respective inhabitants, excluding aliens, and shall be chosen by single districts. The first apportionment shall be made at the first session of the Legislature after the adoption of this Constitution. The several boards of supervisors in such counties as may be entitled to more than one member, upon such

apportionment, shall assemble at such time as may be provided by law and divide their respective counties into assembly districts, equal to the number of members of Assembly to which such counties are entitled by such apportionment, and shall cause to be filed in the office of the Secretary of State, and of the clerks of their respective counties, a description of such assembly districts, specifying the number of each district, and the population thereof, according to the last preceding State enumeration, as near as can be ascertained. Each assembly district shall contain, as nearly as may be, an equal number of inhabitants excluding aliens, and shall consist of convenient and contiguous territory; but no town shall be divided in the formation of such districts.

The Legislature, at its first session after the return of every enumeration, shall ascertain the number of members of Assembly and apportion them among the several counties of the State, in the manner aforesaid, and the boards of supervisors in such counties as may be entitled, under such re-apportionment, to more than one member, shall assemble at such time as shall be provided by law, and divide such counties into assembly districts, in the manner herein directed; and the apportionment and districts so to be made shall remain unaltered until another enumeration shall be taken under the provisions of the preceding section.

Every county shall be entitled to one member of Assembly, except that the counties of Fulton and Hamilton shall elect together, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. No new county shall be erected unless its population shall entitle it to a member.

My reasons for this are briefly, as follows:

The Constitution of 1777 provided that the Assembly should consist of not less than 70 members, and might be increased by a definite ratio to 300, as the population increased. The amendments of 1801 fixed the number at 100, with a provision for their increase by a certain ratio to 150. The Constitution of 1821 fixed the number at 128, which has since been unchanged. The population of the State in 1786 was 238,897; in 1800, 588,603; in 1820, 1,302,812, and is now about 4,000,000.

One of the great fundamental ideas of American polity is that the legislature should consist of two bodies, one of which, being more numerous than the other, should primarily represent the people, and the nearer it comes to the people and the more directly it emanates from them, the more in accordance it is with a republican form of government. Such a body stands in the place and stead of the people—it is theoretically and practically a representative body, its members are simply agents. The number of these is, in the first instance arbitrary, but the larger it is the more nearly it represents the people. The number should fairly represent the population and still not be so large as to prevent or interfere with the proper discharge of their legislative duties. As population increased the number should increase up to the limit of availability. If 128 was the right number in 1821, it should be increased now as a matter of right, unless there is some good

reason for not doing so. The only objection to it that I know of is, that a larger number will interfere with the proper transaction of business. Is this true in fact? The House of Commons, in Great Britain, is composed of over 600 members. The legislative body in France was composed of 267 members prior to 1863, and since that time, of 383. The House of Deputies, in Prussia, has 350 members; and in Italy, 443. The House of Representatives of the United States has 244 members; the lower house in Massachusetts, 240; in Connecticut, 237. In all these cases, and others that might be cited, there has been no difficulty in transacting business. It seems to me, therefore, that we can safely provide for an increase of the Assembly, graduated by the increase of population, and if we can do it with safety it is our duty to do it. The public wants and feelings call for it. Many consider that a larger body will be less liable to outside influences, less subject to the temptation of mercenary motives. All shades of opinion or interest will stand a better chance of being represented in a larger body than in a small one. My idea is to lay down or establish a rule or principle which will admit of expansion, so that the Constitution in that respect will not need remodeling every decade. A ratio is preferred to a fixed number inasmuch as it will do justice to future increase and follows the precedent of the Constitution of the United States as well as our earlier Constitutions.

The ratio of 1 to 20,000 representative population commends itself by its adaptation to the smaller counties, and it will produce a gradual increase from the present number. This ratio will give now 172 members, and in 1875 about 200 but I think the numbers should never exceed 250.

Members of Assembly should be elected by single districts as now, because

1. No change has been called for in that respect by the people, or is needed by the necessities of the times. Prior to 1846 the people had elected by counties as now proposed, ever since 1777, and the experience of seventy years had convinced them of the necessity of single districts, in order to attain a correct and responsible representation. The larger the district and the more that are elected together, the less and more divided is the feeling of responsibility, the less direct is the accountability.

2. The people are more nearly represented, their feelings and views, more exactly expressed. Whether laws are local or general, each locality may have its peculiar views, or be peculiarly affected, and they have a right to have as direct an expression of their views as possible.

3. Minorities will be better represented. The question of the representation of minorities is an important one, and is attracting universal attention. All will admit its propriety and justice in a representative form of government. It is not a partisan question, inasmuch as the party in the majority this year may be in the minority next year. But the trouble is to fix on some system that will be practical in its operations, and understood by and acceptable to the people. The ingenious theories of Mr. Hare, are more adapted to the evils of the British sys-

tem than to our own. His fear of the tyranny of majorities has not much foundation in fact with us. Still it is our duty to afford every facility possible for the proper expression in our legislative bodies of the views of all our citizens. The proposition that any one receiving a certain number of votes, wherever in the State they may be cast, is intepded to accomplish this result. But will it do this? If the people act, spontaneously, that is without concert or agreement, in the selection of their candidates, their number will undoubtedly be large, and but a few of the more known or popular will get the required number of votes. And then, in determining which of those receiving a less number, shall go to fill up the necessary number of the legislative body, as much injustice may be done to minorities as would be in any other system. If, to avoid this, a plan of union or co-operation, before casting the votes, is determined on, this would lead inevitably to the county or State Convention, which should fix or nominate the candidates for the several localities. This result would not, I imagine, be satisfactory, its evils would overbalance any good that might arise from it.

By the cumulative system, recommended by Mr. Mill, any elector, in case more than one member was to be elected in the district, instead of putting on to his ticket several names, might vote for one man, so that it would count for him as many as there were members to be elected, and thus cumulate the vote of his favorite candidate. This of course would allow a large minority to choose some of the members, and would to that extent be beneficial. Taking into account, however, the habits of our people, it is doubtful whether an innovation of this kind would be advisable, if the end can be approximately reached in any other way. As a matter of fact, minorities, as a whole, have always been fairly represented in the lower House, much more so than in the Senate, resulting entirely from the less size of the districts. Retain the feature of single districts together with the privilege, to any district, of choosing a citizen living in any portion of the State, and I think as much will be accomplished toward representing minorities as would be by any other plan.

4. Another advantage of single districts is that nominations will not be as much under the control of central, political regencies. In every large county, at its political center, there is a party power, that would in a great measure control nominations, if made at one time and place for the whole county. This is not right to the mass of the people, especially in electing the more numerous and popular body that peculiarly represents them. It is no answer to this to say, even if true (which I deny) that better men might or would be usually chosen. The same principle might leave it to a State convention, or to an Albany or New York regency to choose all our officers. The question is, how shall it be arranged so that the mass of the people can express their own views by themselves, and not through any self-appointed guardians or political managers. This is more important in view of the fact that the Senate, by the plan now proposed, is placed farther from the people, and will be a



these committees are independent body. We should not interfere in the matter. The intelligence of the people will be ready to detect. If improper suggestions are made, the remedy of disapproval is at hand and is more effectively applied and better than any other remedy chosen.

All which is respectfully submitted.

M. H. MERWIN.

The PRESIDENT.—The report of the minority committee of the Whole

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would involve expense. I should like to know from the mover of this resolution whether the answer to this inquiry would involve any considerable expense or not.

Mr. DEVELIN—I cannot answer the gentleman positively, but I can give the Convention and the gentleman who makes the inquiry what the experience and practice of that office has been heretofore. Different Legislatures have called upon the Comptroller and other city officials for information, involving as much labor as will be necessary to give this information, and no charge has ever been made by the city officials for the information thus furnished or the labor that was expended in obtaining it. I presume there will be no expense incurred at all in furnishing this information to the Convention.

Mr. FOLGER—I desire to know from the chairman of the Committee on Contingent Expenses, for what these charges are made—the \$1,000.

The PRESIDENT—The Chair will inform the gentleman that his inquiry is hardly relevant to the pending order of business.

Mr. PERRY—Perhaps I ought not to sit here in silence and hear remarks made which are incorrect. The gentleman from Westchester [Mr. Greeley] has received his information, not from me, and I do not know from whom he has obtained it. I have made no statement of that character, but I have no doubt, the gentleman received the information from some source. I have been informed by the clerk that bills of this character, to what amount I am unable to say, have been received by him, and that he has information from various sources that others are to be presented.

Mr. OPDYKE—I hope the mover of the resolution [Mr. Develin] will consent to enlarge the scope of his inquiry so as to embrace the value of the lands thus donated.

Mr. DEVELIN—I have no objection to that amendment if the gentleman will specify the time. If he desires to ascertain how much property has been granted to institutions of the Catholic Church, the colored orphan asylum, and other institutions in the city of New York, he would have to go back further than my resolution covers. My resolution only goes back to 1847. I think many of those grants were made thirty or forty years ago.

Mr. OPDYKE—I had no desire to change the period of inquiry embraced in the gentleman's resolution, but I wish for whatever period it may embrace, that the information should be in full.

Mr. DEVELIN—I will accept the amendment.

Mr. T. W. DWIGHT—I have drawn a clause which I will submit as an amendment to the resolution, as follows:

"He is also requested to state what grants of land or real estate have been made by or under the authority of the city of New York, or executed by any officer therein, within the same period, to charitable or religious corporations or institutions, whether under lease or otherwise, and when under lease, to state the amount of rent reserved."

Mr. DEVELIN—I will accept the amendment of the gentleman if he will add to it as follows: "And the conditions or covenants contained in the grant."

Mr. T. W. DWIGHT—Certainly.

The question was then put on the resolution of Mr. Develin as amended, and it was declared adopted.

Mr. CURTIS offered the following resolution:

Resolved, That the Commissioners of the Land Office be requested to communicate to the Convention their proceedings, under Chapter 481 of the Laws of 1866, authorizing the sale of lands donated to this State by the United States.

Which was laid over under the rule.

Mr. A. D. RUSSELL offered the following preamble and resolution:

WHEREAS, The creation of districts which are formed by the Legislature by connecting several counties together for certain purposes and confiding their interests, so far as connected with those purposes, to hands of the State officers is a proceeding of doubtful utility, and calculated to destroy the civil division of the State into counties, and has the effect, which is inconsistent

with the genius or spirit of republican institutions of centralizing power in the State Government, which upon every principle of Democracy, should be wiled by localities; and

**WHEREAS,** It is invidious for the Legislature to assume that certain parts of the State, in reference to mere matters of morality, demand legislation, fundamentally different from that which is applicable to other portions of the State, and to enact laws adapted to and proceeding from such an assumption on its part; and

**WHEREAS,** The odiousness of such legislation has been strikingly exhibited in an act of the Legislature of this State, passed April 14, 1866, entitled "An act to regulate the sale of intoxicating liquors within the Metropolitan Police District of the State of New York," which district is made to embrace the city and county of New York, as though their interests in that particular could not, with safety or propriety, be managed or controlled by officers appointed or elected within those localities under laws uniform in their character in regard to the other portions of the State; therefore,

*Resolved,* That a provision ought to be inserted in the Constitution of this State, as amended and proposed by this Convention, to the effect that the sale of intoxicating liquors within the different counties of this State, should be regulated (if at all) by legislative enactments, uniform in their character and applicable to every portion of the State, and conferring upon appropriate officers, appointed or elected within the respective counties of this State, the powers and duties requisite or incident to such legislative regulation.

*Resolved,* Further, that licenses to sell liquors at retail, granted in pursuance of existing laws, and for a specific term designated by law, ought to be deemed irrevocable unless for cause to be specified in the laws under which such licenses are issued, and ought to be regarded as contracts, within the provision of the Constitution of the United States, prohibiting a State from passing a law impairing the obligation of contracts — and that a provision, embodying this principle, be inserted in the Constitution of this State, as amended and proposed by this Convention.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. SCHOONMAKER offered the following resolution:

*Resolved,* That the Secretary of State report to this Convention, the number of leases or grants given by the State or Commissioners of the Land Office, which are still outstanding and unexpired, the names of the lessees or grantees, the rental, and a brief description of such property.

Which was laid over under the rule.

Mr. PROSSER offered the following resolution:

*Resolved,* That the report of the Auditor of the Canal Department, in response to a resolution of this Convention under date of June 26th, be printed.

The PRESIDENT — The Chair will inform the gentleman that it will be printed as a matter of course, under the standing rule of the Convention.

Mr. PROSSER — This is different from ordinary reports. The Auditor during the recess of this

Convention, after having prepared the report in response to a resolution of the Convention sent it down directly to the printer, and I am informed by the Auditor it requires the passage of this resolution to have the report already printed laid upon our table.

The PRESIDENT — The Chair will inform the gentleman that the 41st rule provides: There shall be printed, as of course, and without any special order, 800 copies of all reports of committees on the subject of constitutional revision, and of all reports and communications made in pursuance of the order or request of the Convention; and 800 copies of the Journal; which number shall be denominated the usual number.

Mr. PROSSER — Notwithstanding that rule, sir, the report not having been sent direct to the Convention, but sent to the printer by the Auditor, I think it requires that resolution.

The PRESIDENT — The Secretary of the Convention will now send it to the printer, and it will be printed under the rule.

Mr. STRATTON called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved,* That the Comptroller of the city of New York be and he is hereby instructed to make full report to this Convention of the net sums annually received from the several sources herein enumerated and applied through the sinking fund for the redemption of the city debt, or to the payment of interest on the city debt during the years from 1847 to 1866 inclusive, and a statement showing the expenses incurred in each of said years, in granting such licenses, collecting such fees, and in legal efforts to enforce payment or collect penalties for non-compliance to law or ordinance in each of such cases; whether such expenses were allowed by the mayor and common council of the city, or by the board of supervisors of the county, namely:

1. For licenses to pawnbrokers, and to dealers in second-hand furniture, metals or clothes.
2. For licenses for hackney coaches and drivers.
3. For fees of market privileges and market rents.
4. For majority fees.
5. For fines and penalties.
6. For fees and fines collected by clerks and courts.
7. For tavern and excise licenses.

Mr. DEVELIN — I beg leave to ask the gentleman the object he has in view in asking for the information required by this resolution?

Mr. STRATTON — The resolution itself shows the reasons pretty plainly why this is called for. I am, aside from what is stated in the resolution as to the information itself, enabled to say that some of these items which are named are of such a nature that the report will show that the expenses of collecting them are twice and three times the amount of moneys received for the licenses, and that instead of furnishing a source of revenue for the sinking fund, they are really a source of expense to the city of New York. We want this information so that we may, in fixing the different departments of the city government, if they are to be fixed by this Con-

revenue, to be derived, and to arrange these revenues so that there may be derived from them a revenue to the city, and that they shall not become a burden to the city. This resolution will show us what remedy we have to offer, and without the information, it is impossible for the Convention to determine the propriety of the action.

Mr. DEVELIN—It seems to me that the information asked for by that resolution is entirely unnecessary for the action of this Convention. All these revenues mentioned in the resolution are pledged by law in payment of the city debt, and it would be a violation of public faith for this Convention to take any action by which the amounts derived from those sources shall be diverted from the object to which they have been pledged by legislation for nearly twenty years. This resolution looks more like the appointment of a committee of inquiry and investigation, which might be proper in the Legislature, but certainly it cannot be necessary to put it in the Constitution and make it part of the fundamental law, how many licenses should be granted in the city of New York, and how the money received for those licenses shall be applied, and how the money received from the fees of market privileges shall be appropriated, or the money collected by the clerks of courts. All these things are inappropriate for the consideration of the Convention; but in order that it may take an intelligent direction and that we may have a report as to whether these things are necessary, I move that that resolution be referred to the Committee on Cities, for them to report to this Convention whether they consider the information requested by this resolution as important for the Convention and for their action.

The question was put on the motion of Mr. Develin, and it was declared carried.

Mr. NELSON—I desire to offer the following resolution. I wish to say that I am not the author of the resolution, but it has been drawn up by citizens of the county in which I reside, who wish to see if something cannot be done to relieve them of the burdens under which they labor by reason of the title of their lands being tied up by perpetual leases. I have left a blank for the committee to which it is to be referred for the very good reason that it did not occur to my mind which was the appropriate committee.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Committee on the Judiciary be instructed to inquire into and report as to the propriety of inserting in the Constitution a provision in substance as follows:

"The owner or owners of any lease or leases of any piece or parcel of land in this State, of fifty acres or more in extent, used for agricultural purposes, the lease or leases by which the same is held depending upon a life or lives, shall be entitled, upon the death of the person or persons upon whom any such lease shall have depended, to become the owner or owners of such lands so leased in fee simple absolute, upon paying to the person or persons to whom such lands would revert, at the expiration

of any such lease, the appraised value of such lands exclusive of any increased value from permanent improvements hereafter made thereon by such tenant in fencing, buildings, and draining, and the Legislature shall determine the manner of the appointment of such appraisers and establish regulations for making such appraisal and payment.

Mr. VERPLANCK—I move that the resolution do lie upon the table.

Mr. NELSON—I hope the Convention will not vote to lay the resolution upon the table. The history of the past, and the contest in this State—

The PRESIDENT—The Chair would inform the gentleman that the motion is not debatable.

The question was then put on the motion to lay the resolution on the table, and it was declared to be lost.

Mr. SEYMOUR—I think the subject alluded to in this resolution is a very important one, and one which certainly concerns the people who live in the center of the State. I hope it will be referred to the proper committee, and I would designate the Committee on Industrial Interests as the appropriate committee to which it should be referred.

Mr. WEED—It seems to me that the Committee on the Judiciary is the proper one to which a resolution of this kind should be referred. As I gather from the terms of the resolution, it proposes to dispose of certain interests in this State that are known as the anti-rent interest. It seems to me that this question is certainly one which should go to the Judiciary Committee in order to have the light of their judicial knowledge upon the subject before a report is made. I make that motion.

The PRESIDENT announced the question to be upon the motion to refer to the Committee on Industrial Interests.

Mr. CONGER—I think that the suggestion made by my friend on my right [Mr. Weed], is one that should unquestionably meet the approbation of this body. It is not a resolution affecting simply the industrial interests of the State at large, because, in whatever view you may look at the plan which has been submitted, it is a question of right, and it is a question of right to be determined judicially. What is the proposition? Why, that in cases of leases for life, when a party who has the fee dies, then the question of the reversion is to be treated entirely as if it did not exist, and the interest of the tenant is to be treated as if the lease were a deed in fee instead of a lease for life. Is not that a judicial question? If this resolution had referred to the question which has agitated this State principally upon the subjects of grants in fee, reserving the lease—

The PRESIDENT—The Chair will ask the gentleman from Rockland [Mr. Conger] to confine his remarks to the question of reference.

Mr. CONGER—It is my desire to do so, and I wish to show to this Convention without going into the merits of the question, that it is a judicial question, and not a question affecting merely the industrial interests of the State.

Mr. SEYMOUR—After the remarks of the gentleman from Clinton, [Mr. Weed], I will with-

draw my motion and consent that it be referred to the Judiciary Committee.

The PRESIDENT announced the question to be upon the motion to refer to the Judiciary Committee.

Mr. FOLGER—Is the motion amendable?

The PRESIDENT—The Chair holds that it is not amendable.

Mr. FOLGER—May we not move to refer to another committee?

The PRESIDENT—The Chair holds not.

Mr. FOLGER—Then sir, I trust this motion will not prevail. In the arrangement of the business of the Convention which was adopted on the report of the Committee of 16, it will be remembered that a portion of the duties of the Convention were allotted to the consideration of different committees. This proposition of the gentleman from Dutchess [Mr. Nelson], refers entirely as I understand it, to a subject that is alluded to in the Bill of Rights, Section 14.

"No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid."

That I think is more cognate to the matter of the resolution than perhaps any other portion of the Constitution. Section 15 "All fines, quarter sales, or other like restraints upon alienation reserved in any grant of land, hereafter to be made, shall be void," also refers to the same subject. These sections in the first article of the Constitution which were adopted, grew out of the same feeling and the same circumstances which have originated the resolution of the gentleman from Dutchess [Mr. Nelson], known commonly to us as the anti-rent feeling, prevailing in this State. The Convention of 1846 took hold of the question, and pursued it to a certain extent, and their convictions upon the subject are embodied in the article of the Constitution which is known as the Bill of Rights. The proposition of the gentleman from Dutchess is to follow a little further in that direction, and to go still further with the question of the anti-rent matter in this State; in fact, to end it; so far to end it by the Constitution of the State that it shall no longer trouble the courts and no longer occupy the time of the Legislature. To my mind this is a question appropriate for the consideration of the Committee upon the Preamble and Bill of Rights, and therefore, I trust the motion to refer to the Judiciary Committee will not prevail. Taking what seems to be the arrangement of business as adopted by the Convention, and following the plan of the Constitution of 1846, I think that would be the appropriate Committee. It is an abstract question referring to constitutional right and the rights of the citizens, and taking away what might be called the vested right which cannot be taken away except by alterations of the Constitution. The Committee on the Judiciary has not to do with questions of constitutional right. It has to do with the arrangement of some body which shall decide those questions. That is all. The Judiciary Committee does not sit upon abstract questions, and propose to enlighten by their labor and reports this Convention as to abstract questions. It has only to determine and report to this Convention how a system shall be

prescribed by which certain citizens shall be designated from the body of the population of the State to sit in court and dispose of such questions. This is a question of abstract right which should go into the Bill of Rights, and nowhere else, and should properly go to that committee.

Mr. PAIGE—It seems to me that the Committee on the Judiciary is the proper one to which to refer this question. As I understand it this is a proposition to consider how these leases should be extinguished. It is therefore a question of individual right, and the question arises how these leases are to be disposed of, and how the tenants are to be released from their obligations and payment on the lands for an equivalent. It is therefore a judicial question. If these parties under these leases on either side have a vested right under this contract, we have no power as a Convention to put in the Constitution anything to deprive them of those rights, for they are protected by the Constitution of the United States, and therefore I think the motion to refer to the Committee on Judiciary is a proper motion and the proper reference.

Mr. DUGANNE—I desire only to say that this entire subject, involving the anti-rent condition of affairs in certain counties, has been before the Committee on Industrial Interests, and has been examined by them to some extent, and they propose to submit a clause to go into the Bill of Rights, which they think will cover that subject. Propositions with regard to all matters which seem to appertain to that subject, might therefore properly be referred to the Committee on Industrial Interests, which already has charge of the subject.

Mr. McDONALD—I shall vote for the reference to the Committee on the Bill of Rights for this reason only. It is well known that the Committee on the Judiciary—

The PRESIDENT—The Chair would inform the gentleman that there is no such motion before the Convention.

Mr. McDONALD—Then, sir, I shall vote against the motion to refer to the Committee on the Judiciary, for the reason that that committee is already burdened, so to speak, with a full share of the labor allotted to committees of this Convention. I find on the Committee on the Bill of Rights such names as Mr. Evarts, of New York, and the honorable gentleman from Schenectady [Mr. Paige] and I am very sure if there is any question about any vested right they will be as able to consider it and to present it to this Convention as anybody on the Judiciary Committee; and I am also quite sure that their labors are not as burdensome or as great as those of the Judiciary Committee. I am therefore opposed to this reference to the Judiciary Committee for the reasons I have stated, and I think the resolution ought to be referred to either the Committee on Industrial Interests, who have already considered the subject, or to the Committee on the Bill of Rights who are equally able to decide upon this question.

The question was then put on the motion to refer to the Committee on the Judiciary, and it was declared to be lost.

Mr. C. C. DWIGHT moved that the resolution



be referred to the Committee on the Preamble and the Bill of Rights.

The Convention then resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage and the qualifications to Hold Office: Mr. ALFORD, of Montgomery, in the chair.

The CHAIRMAN announced the question to be upon the amendment offered by Mr. Murphy to the amendment offered by Mr. C. C. Dwight.

Mr. DELAHAN—It is with no little diffidence I rise thus late, to participate in this discussion. Originally it was not my intention to say anything upon the subject, but so many extraneous matters have been referred to by previous speakers that I feel, that on behalf of my constituency and myself I should say something in explanation of my position and in support of my vote upon the amendment proposed by the honorable gentleman from Kings. In the course of this discussion some assertions have been made, that in my opinion were in very bad taste and out of place. I will take occasion to refer to them hereafter. It seems to me, sir, that the position of many democratic members on this floor (and I can speak positively for myself) on the suffrage question is very improperly understood, and that there is a pitiable effort on the part of some gentlemen on the other side, to identify those who oppose the extension of negro suffrage with those who opposed the abolition of slavery. For my part, as a matter of principle, I am opposed generally to property qualifications, for I believe the possession of property has much tendency in making owners use the worst influences on government in all countries, because the inducement is held out to them to advance their own private interests. I would much rather, sir, have submitted to the people of this State the question whether they wish the extension of the right of suffrage at all to the negro. Were this question to be submitted I don't hesitate in saying that I would most certainly vote No! But if the question of suffrage to the negro in some manner is already settled, I would have that suffrage free and unshackled. I believe that there are few gentlemen on this floor who support suffrage as a natural right, and that the fact of it being a political privilege is well understood. In the language of a talented and prominent abolitionist, the elective franchise is not a natural right, because it is political power, and political power is always a civil trust, never a natural right, and the State judges for itself to whom it will or will not confide the trust. The extension of the ballot is more or less a leveling of distinctions and classifications, a secret magnet that tends to bring together and unite more closely incongruous and natural differences in races. I believe, sir, that the white race politically, should have some superior and distinctive position; and that the black race, but yesterday freed from slavery, educated in ignorance, meniality and dependence; wallowing in contented obfuscation, and satisfied oblivion; not asking for, and entirely ignorant of the more than voluntary efforts of a party in this country to drive them to the ballot box—is no race that can command or justly deserve the suffrage from me, when

the gift of that suffrage would of necessity injure my country and affect my race. This question, sir, is a question of expediency, a question of taste and association, and I oppose such an equalization, for the reason, sir, that you avoid obnoxious and dangerous company. It is said that we owe the suffrage to the negro for his loyalty, and that our Union would not have been saved were it not for the efforts of negroes. This, sir, is an insult to the American people, for I believe the white men of this country can control and prosper it, and I have never yet discovered an issue of intelligence, heroism, and loyalty to be born from the union of ignorance and slavery. I believe true courage, so necessary to the successful soldier, can only emanate from independence and mental and moral development. When in Virginia during the war I asked one of these slaves, who had been transformed into a Northern recruit, and dressed in blue coat and brass buttons, who George Washington was; he said he knowed nuffin about him. Some other person asked him who was Jesus Christ, he scratched his head and laughed and replied, that he didn't care, for he was now goin' to take care of hisself. No! it was not loyalty that made the negro fight in our ranks. He had no chance of knowing what loyalty meant; it was dread of hard labor and danger at home that drove him inside of our lines and inability to get other employment when he reached there. The negro north was induced by novelty and big bounties and no doubt the negro both north and south was generally very much influenced by remembrances of the harshness and sufferings of slavery; but loyalty never troubled either his heart or brain. I sir, always detested the institution of slavery and were any measure before this body tending to the destruction of a wrong or supporting the establishment of a right, no one would feel warmer in advocating the same than myself. I never could consent, however, to the destruction of this republic for the destruction of slavery, and in this respect differed with the humanitarians. I never could join their humanitarian choristers in singing:

"Tear down the flaunting lie,  
Half-mast the starry flag;  
Insult no sunny sky  
With hate's polluted rag."

I wished, sir, while reprobating and regretting the existence of slavery in our country to preserve the republic, and to keep proudly to the breeze our honored flag, perfect and whole in its starry beauty. When the crisis did come the Democratic party did its duty, and when slavery was buried under the debris and ruins, and the republic safe, I thanked God, and so did the Democratic party. Humanitarianism cannot claim the victory in our recent struggle, the success of its cause was but incidental to the grand victory of the republic itself in sustaining its own shaken structure, and in planting itself on a firmer basis for the benefit and prosperity of mankind. It is well known, and it is had from the lamented Abraham Lincoln himself, that he would never have issued his emancipation proclamation were it not to enlist the sympathies of Europe in favor of the North in order to save the Union. In England, the extension of the suffrage has been a

work of gradation, and very much weight is attached to the condition of the classes, as to their fitness for the proper exercise of such a power; and progress being slowly made as time and experience matures the classes for the just use of the ballot. Principle must sometimes give way for expediency, and though some of our republican principles may support the extension of the right of suffrage to negroes, still expediency and national prosperity to-day say no. Give the unrestricted suffrage to the negro in New York, and you form a precedent for dictation to the Southern States, or perhaps more correctly speaking, an aid to the systems of compulsion now being used to force the south in granting negro suffrage. In relation to the negro's qualifications for self-government I cite the following: Jamaica contains 6,400 square miles of the richest soil in the world. Before emancipation, in the year 1809, the value of her exports was \$16,000,000. In the year 1853, and after emancipation, only \$4,000,000. Assessed valuation of property before emancipation in 1843, \$250,000,000. In 1852 it was only \$37,000,000. In the same year the number of estates ruined were as follows: Sugar estates abandoned, 199, or 275,000 acres: coffee plantations abandoned, 162, or 493,000 acres. The Cyclopædia of Commerce says "that the negro is rapidly receding to a savage state." A Mr. Baird, one of the warmest advocates of emancipation said: Let a visitor see with his own eyes, the neglected and abandoned estates, the uncultivated fields, fast hurrying back into a state of nature, with all the speed of tropical luxuriance—the dismantled and silent machinery, the crumbling walls and deserted mansions, which are familiar sights in most of the British West India colonies; let him then transport himself to the Spanish Islands of Porto Rico and Cuba, and witness the life and activity which in these slave colonies prevail. Ex-Gov. Ward, of Ohio, an abolitionist, said, after visiting Jamaica: "Since the blacks have been liberated they have become indolent, insolent, degraded and dishonest. They are a rude and beastly set of vagabonds, lying naked about the streets, as filthy as the Hottentots, and I believe worse." Sewell, another anti-slavery man said: "There is not a house in decent repair; not a wharf in good order, no pavement, no sidewalk, no drainage and scanty water; no light. There is nothing like work done, all is wreck and ruin, destitution and neglect. The inhabitants taken en masse are steeped to the eye-lids in immorality. The population shows unnatural decrease. Illegitimacy exceeds legitimacy." So much for the negro's capacity for self-government, and I ask some gentleman to inform me what good could result to-day from the exercise of the ballot by such a race? This is a national question and not confined to the State of New York. The people of the State of Connecticut saw fit to vote against unrestricted negro suffrage, but a short time ago, and I believe the people of this State will vote against it if the question is submitted separately and vote against the other proposed amendments to the Constitution if submitted in connection with them. At some future time, sir, when the negro can be learned

at least in the objects of our government, then I may be willing to extend to him the ballot, but to-day sir, in the unsettled condition of our national affairs I am of opinion it would be unsafe and unpolitic. I do not consider that the negro should be able to solve a problem in Euclid before voting, but I do think he should be impregnated to some extent with the *amor patriæ*, and that common reason should guide all classes that have control of the political destinies of this republic. These qualities the negro race does not possess at present. If the negro has remembrances of slavery, he also remembers that the scene of his slavery was in this republic, so that as far as the past is concerned he has no cause for affection. He has as yet, hardly tasted of the sweets of liberty, and is perfectly satisfied if let alone and permitted to do as he pleases. The white citizen knows his country's history and loves her for her beneficent government and because of her free and liberal institutions, and the foreigner lifts his eyes to the western sky, while bending under the shackles of European tyranny, and hopes for the time when he can become a proud citizen of the American Republic. The gentleman from Onondaga [Mr. Corbett], spoke eloquently and truly when he spoke of the sufferings of that race whose blood courses in his veins and mine, but he spoke extravagantly when he sought to draw a comparison between the oppression of that race and the almost natural condition of the negro race. The sufferings of the Irish have no reflection in the condition of the negro, and nothing but a forced, sickly sentimentality could make any gentleman, because sympathizing with the efforts of the Irish people for liberty, arrive at the conclusion that having committed himself so far to the Irish race, he must then of necessity make negroes lords of the manor in this country. The Irish race is one plethoric in the finest quality of brain, brim full of poetry and prowess, the blood of which has streaked every battle-field under the sun. Its sufferings were and are the sufferings of liberty's longings, the labors of patriotic fervor to loosen the clutch of despotism. The negro race is a physically discolored and mentally inferior one, dependent, helpless and lazy. With no history of credit, and unknown to fortune fame and story. Complaining of subjection when they suffer bodily or when their selfish propensities are excited and never aspiring for liberty in its true sense, for the black man does not comprehend what liberty is. I was sorry to hear the gentleman from Onondaga [Mr. Corbett] accuse the democratic party of proscription, because he, in my opinion, should be the last man to make such an accusation. If he chooses to-day to labor with the republican majority, if he elect to differ with the party to which the race from which he sprang is closely allied, I had hoped he would have remembered the past—the ready protection his father's countrymen found, when exiled, in the arms of the democratic party from proscription and intolerance. Know-nothingism has also been spoken of by the gentleman from Onondaga and by him connected with the democratic party. I say, sir, on information that there are some prominent republicans on this floor who have not yet forgotten how to signal an O. U. A.

When know-nothingism was rampant in full tide in Virginia it was a democrat that stopped its progress. Henry A. Wise in his famous letter in 1854 said among other things—"When we were as weak as 3,000,000 we relied largely on foreigners by birth to defend us and aid us in securing independence. Now that we are 20 millions strong how is it we have become so weak in our fears as to apprehend we are to be deprived of our liberties by foreigners? Verily this seemeth as if know-nothings were reversing the order of things or that there is another and a different feeling from that of the fear arising from the sense of weakness. It comes rather from a proud consciousness of over-weening strength. They wax stronger, rather, and would kick like the proud grown fat. It is an exclusive if not an aristocratic feeling in the true sense, which would say to the friends of freedom born abroad, 'we had need of you, and were glad of your aid when we were weak, but we are now so independent of you that we are not compelled to allow you to enjoy our republican privileges. We desire the exclusive use of human rights, though to deprive you of their common enjoyment will not enrich us the more, and will make you poor indeed.'" This was the language and spirit of the Democratic party on the subject of proscribing foreigners and Catholics. A word more and I have done. The gentleman from Onondaga [Mr. Corbett] has said it would be cowardice to submit this suffrage question by itself to the people. And, while speaking in this connection, I would allude to some remarks that were made by the gentleman from Clinton [Mr. Axtell] yesterday, in which he saw fit to introduce certain algebraical terms and mathematical displays, and I thought then, and do now, that his argument had as much to do with proving the expediency of this subject as the argument of the country minister when he sought to prove that our Saviour was the Son of God, and cited, as his argument, that if Judge Bowen and he were to run a race, and Judge Bowen got to the place before he did, it was not because he ran faster than he did, but because he got there faster, and, therefore, the Saviour must have been the Son of God. I consider the cowardice consists in conjoining this proposition with the other amendments, because it is evidently to obtain votes from the supposed popularity of these amendments. The separate submission was not cowardly in 1846. To submit this question independent of other influences, would be to evidence by this Convention, confidence in the people; a sense of justice to the question itself and to the remaining proposed amendments. It is the only fair means of learning the true wishes of the people, and for this reason, I support and will vote for the amendment offered by the gentleman from Kings [Mr. Murphy].

Mr. MURPHY—I beg the indulgence of the committee for a short time—

Mr. RATHBUN—I believe, Mr. Chairman, there is a rule which provides that any member who has spoken once on a subject, shall not speak again, until all the rest have spoken—

The CHAIRMAN—The same rules that apply in Convention obtain in the committee, and the

rule says that no member shall speak twice upon the same question, until all others have spoken who desire to speak. The Chair will enforce the rule if it is insisted upon.

Mr. MURPHY—My friend from Cayuga [Mr. Rathbun] if he hear my request will probably not object—I rose simply to ask the indulgence of the Committee, not to continue this debate, or to speak to the amendment which I proposed, but merely to reply to what I consider some personal reflections, or animadversions made during my absence by the gentleman from Oneida [Mr. T. W. Dwight].

The CHAIRMAN—If there is no objection the gentleman from Kings [Mr. Murphy] will proceed.

Mr. MURPHY—I was very much surprised, in taking up the report of the proceedings of this body on Saturday, after I had left for home, to find that remarks had been made by that honorable gentleman which seemed to reflect upon myself personally. I certainly entertain a very high respect for him and also for Prof. Lieber, from whose works I had made some citations, and I regard them both as public men of reputation and distinction; men adorning the institution to which I owe, perhaps, all that I am as a man. And, sir, I felt mortified, therefore, to read in the remarks of the gentleman that I was favored with the presumption on the part of the gentleman, that I was an honorable man. He charges me with having made some charge against Professor Lieber, which he was called upon in his position and from his relation, as a colleague of that gentleman, to rebut—that I had accused Professor Lieber, as I gather from his remarks, as being against the extension of the elective suffrage to the negro race. Now, sir, I made no charge; the language of mine which the honorable gentlemen quotes, contains no charge against Professor Lieber. I merely referred to a fact. I made a statement of fact which was in all respects true, and not tending in the least to animadvert upon Prof. Lieber, with regard to his opinions. I said, sir, as quoted by the gentleman from Oneida [Mr. T. W. Dwight]: "There, sir, is a writer of distinction who is indorsed politically, [by certain parties] who maintains very distinctly the inferiority of the negro race in capacity." That sir, was my declaration in regard to Prof. Lieber. When I added [this is] the ground upon which many who oppose negro suffrage base their opposition to granting the negro the right to vote, I did not say that Prof. Lieber opposed extending the right of suffrage to the negro, or that he put his opposition upon any such ground. I merely stated, he, as a philosophical writer had asserted the inferiority of the negro race, and that in the opinion of many, such inferiority, was a ground for opposing the extension of suffrage to the negro. The committee will recollect that in this connection I gave no reason, why I myself opposed negro suffrage. I was arguing, as far as my ability would enable me to do, the question whether the extension of the franchise to this class should be submitted to the people as a separate proposition or not. Among other reasons I stated there was a diversity of opinion among the people irrespective of party, and I cited the opinion expressed upon this floor by distinguished gentlemen, that there were many democrats who in 1846 and 1850,

and still were in favor of this extension of the right. On the other hand I said there were distinguished men in the party of the majority here and in the country who were opposed to the extension of negro suffrage, and distinguished writers who gave opinions which furnished the grounds of opposition to this extension. I cited the opinion, at one time, of President Lincoln, and of the patriarch of democracy, Thomas Jefferson. I quoted Prof. Lieber to the point that the negro was of an inferior race to the white, and I read from his book, as far as was necessary for this purpose without reading the further extract as the gentleman has done. I did not think it was necessary for the purposes of my argument to detain the Convention with the reading of the whole. And, sir, I can tell the gentleman that did so deliberately, and not as he would indulgently say, through precipitation. I did not do it, on the other hand, for the dishonorable purpose from which the gentleman would patronizingly shield me, of misrepresenting Professor Lieber. I quoted it because it was all that was necessary for the purposes of my argument, to show that the negro was, in the opinion of that distinguished man inferior in capacity to the white man, and I maintain still that the opinion of Professor Lieber as expressed in this volume, and which as far as I understand, is unchanged by any public writing of his, is that the negro is inferior, in point of capacity, to the white man. Let me call the attention of the committee to this passage again:

"Yet though the distinction between man and brute has thus been distinctly drawn, comparative anatomy and physiology are establishing daily, more clearly, the fact that all those beings comprehended under the vast term of human species, are not only morally or individually distinguished from each other, but in a very marked way physiologically, and as to their capacities by whole races, forming a gradual scale of superiority."

This is the proposition with which Professor Lieber starts, that notwithstanding the alleged unity of the human race (which I believe in, not only as a part of my religious faith, but as the result of my reading on the subject, and I presume such it is the belief of Professor Lieber also) there are differences in capacity among the different races of the human family. How those differences have been produced, whether by organization or whether by continued habitations in particular portions of the world, through the influences of climate and other causes of an extraneous character, I know not. It was not necessary for me to go into that inquiry. The fact of difference exists. It is stated distinctly by Professor Lieber, in the passage I have just read, and having stated the fact that there is a difference of capacity in the human race, he concedes and confirms the main position that men are not equal in capacity. For some causes, either natural, or temporal, or physical, they do differ, and do differ materially. He then goes on:

"The most peculiar skulls of the so called Pre-Inca race, found in South America, are so essentially different from ours, that they alone show an essential difference of that race from ours. The Caffres, Boushmanuas (Bushmen), the Hottentots, and the poor Papous, for instance, differ so

materially in their anatomy and physiologic organization, from the races which comparative anatomy, as well as the history of civilization teach us, by conclusive facts, to consider as superior, that we should abandon all truth, were we to deny the difference."

Does not this language specifically assert that the negro is inferior in capacity to the white race? I would ask if the Caffres, the Bushmen, and the Hottentots, are not negroes, and if they do not come under that designation? Professor Lieber distinctly names these particular tribes without naming all the nations or varieties of the negro, which exist in Africa. It is not necessary for me to call the attention of this committee to the meaning of the word negro, either philologically or in the sense in which it is used in this debate.

Mr. BICKFORD—I would ask the gentleman from Kings [Mr. Murphy], whether in his amendment he designed to include negroes only—whether he intends to include in its operation the brown varieties of the Caucasian race, the Hindoos, the Copts, the Moors, the Chinamen, and the Mestizos of New Mexico, California, and Arizona? I wish a distinct enunciation from him as to whether his amendment is intended to include negroes only, or to include all other colored races, for instance, the black Jews—does he intend to include them?

Mr. MURPHY—The object of this interruption the gentleman [Mr. Bickford] himself best understands. I think there can be no doubt in any mind that it has no pertinency to the question which I have been and am now presenting to the committee. I shall be happy at the proper time to answer the question. I am now addressing myself to what I consider to be a personal matter between myself and the gentleman from Oneida [Mr. T. W. Dwight]. I therefore proceed and say that the particular races mentioned by Professor Lieber in the section which I have last read, were negroes, and that literally and truly my statement is fully maintained. But the gentleman from Oneida [Mr. T. W. Dwight] says that in what Professor Lieber states in the latter part of the section in regard to negroes as they exist in the Southern States, who are understood, I believe, to have been brought from the more northern parts of Africa—from Bonim and other parts of the coast of Guinea—he contradicts the interpretation which I have given to the facts just read. Does he? In my view he confirms it. The point is the inferiority of the negro race to the white race. That is the position I took. The degree or extent of that inferiority I did not argue, nor did I present it to this committee. Professor Lieber, proceeds to say:

"We love to treat, in our theories and meditations, all men as absolutely equal; but truth is truth, however it may militate with beloved, nay, generous theories; and God is a God of truth."

There is where my extract ended. Then he continues:

"He must have had his all-wise ends in creating these different races, as he must have had his ends in creating those many tribes and races, who without light, without expansion of thought or cultivation, have increased and vanished, or who continue to people so many parts of the globe, yet do no more than people them, tribes which live



without history, that is, without progressive change, interesting to the naturalist, but of no account in the history of mankind."

Is not that the true character of the negro? Does it not describe the negro perfectly? From whatever nation or whatever part of Africa the negro may come he has no history. He makes no progress. He is where he was thirty-five hundred years ago, as shown by the Egyptian monuments, and as he is fully described by Roman writers. Professor Lieber proceeds with the sentence which it is alleged contradicts my position:

"Nor is it for us here to speculate how far these tribes, now so low and brutish, may be susceptible of organic improvement, which, it cannot be denied, has taken place with some races. The negro of Virginia is superior, as to the formation of his head, to the negro of the more southern States, because he descends from earlier imported generations. The negro of the most southern of the United States, again, has much more expression of intelligence than the newly imported negro in the West Indies. So has civilization improved the formation of the head in the Celtic race."

This comparison I conceive affords a distinct statement, by implication, that the negroes in this country are of different degrees of capacity of mind, all inferior to that of the white race. I suppose it may be urged in the same line of argument that the negro of the State of New York has a better formed head than the negro of Virginia. Professor Lieber does not say anything in regard to the capacity of this race having been improved—not at all. He is speaking craniologically and physiologically, if I may so express myself, in regard to the form of the head of the negro. He says, the negro head is improving in form in this country; but he does not attempt to contradict here the idea that the negro is inferior in capacity to the white race though he may have so intended. Now, whatever force this extract may be entitled to, I leave to the committee. What I have to say is, I did not present it as an absolute argument for myself in the consideration of this subject, but I presented it as I said before, for the purpose of showing that there were people in this country who considered the negro inferior in mental power. Now, Mr. Chairman, having said all that I proposed to do, that is, to reply to so much of the remarks of the gentleman [Mr. T. W. Dwight] as referred to my motives, and having, if I may so express it, put myself *rectus in curia*, I have nothing more to add at present.

Mr. T. W. DWIGHT—I have no controversy, Mr. Chairman, with the gentleman from Kings [Mr. Murphy]. What I said was simply this: that I thought the gentleman was precipitate in his action. I did not charge him with unfairness, as I distinctly said. After his explanation this morning it is evident that the difference between us is simply one of ethnology. The gentleman from Kings [Mr. Murphy], insists that Caffres and Bushmen and Poor Papous are negroes. I claim, as a matter of ethnology that they are not, and, therefore, that he does not understand the subject as it should be understood, and for that reason he was precipitate. Now the substance of his argument amounts, it seems to me, to this, that every man who lives in Africa is necessarily a negro. But

the fact that a man lives in Africa no more proves him to be a negro than the fact that a man lives in New York proves him to be an Indian. Very recent and reliable authorities divide the African people into five classes.

1. Semitic. Such as Abyssinian, including the sub-Semitic, as the Copts or Egyptian tribes.

2. Nilotic. The area inhabited by these people is the land drained by the Upper Nile. This group includes the Nubians, Gallas, etc. This is a transitional class.

3. Kafirs, or Caffres. These in some cases approach the negro, in others depart from that type.

4. The Negro.

5. Hottentot and Bushmen.

All of these are distinct groups, and in order to show this, I shall quote from some authorities. I have only to deal with the three last classes, the Kafirs, the Negro, and the Hottentots and Bushmen. Now, a high authority (Vol. 2 of the Encyclopædia Britannica, p. 222) says: "The Kafirs or Caffres, have been very wrongly classed with the negroes." Another authority, (Pritchard's Nat. Hist. of Man, p. 384) uses this language: "The complexion of the Caffres is of a lighter hue and much redder than that of the negro. By some, Caffres are reckoned of the red rather than the black races of mankind, and a late American traveler declares that they resemble the Indians of the American continent. They exemplify a type of features strikingly different from that of the Guinea negro, and this is the prevalent type among this nation." And then on page 385 this same authority says: "Caffres, in external form and figure vary exceedingly from the other nations of Africa. They are much taller, stronger, and their limbs much better proportioned; their color is brown; their hair black and woolly; their countenances have a character peculiar to themselves, and which does not permit their being included in any of the races of mankind above enumerated. They have the high forehead and prominent nose of the Europeans, the thick lips of the negroes, and the high cheek bones of the Hottentots." Now, as to the Hottentots and Bushmen, nothing is better settled than that the Hottentots and Bushmen do not belong to the negro race. They are entirely different from other races in Africa. The Hottentot race is entirely different from others in Africa. As authority for this I refer to the Encyclopædia Britannica, Vol. 2, p. 222. Mr. Brace in his work "on the Races of the Old World page 300" uses this language: "A remarkable ethnological problem is presented by a single race in the southern portion of Africa, entirely different from the South African family both in physique and language—a race of copper color and low developments, amid dark races of noble physical structure, and separated from them both by mental peculiarity and by a language presenting features exhibited in no other tongue." The Bushmen are of a dirty yellow color and resemble to some extent a Chinaman in appearance. These persons are of a very low order of beings. A very recent authority says that Bushmen and Hottentots have a better claim to be considered as a separate species of the *genus homo* than any other section of our kind. They are hardly more than four feet high, often live in

holes in the ground and feed on vermin, which the desert, where they live, furnishes them. Though living side by side with other tribes of a higher order they do not change. They scorn all culture of ground and care of cattle. And now as to the "Poor Papous." Ethnologists tell us, that the poor Papous, or Papuans of Australia, are in many respects the most sunken of human beings. For this I refer to Smith's Natural History of Man, page 207. It was not strange that Dr. Lieber, looking on these degraded races should, as many Ethnologists have done, regard them as distinct species of men. In this I do not agree with him. Doubtless he would modify his views, for since he wrote, Christianity has elevated, even these low and sunken people, as I believe it is to elevate all people on the face of the earth. But the point is, does his language include the negro races, and I say, unquestionably, that it does not. These quotations which I have made are from books which may be found in the State Library, and if there is any incorrectness in them it can be shown. These men, viz., Pre-Incas, Caffres, Bushmen, etc., are not in any respect negroes, but of a different race of men. That is my first point. Now my second point is that, Dr. Lieber did not intend to include *our* negro race in his statement. He supposed that these races were not embraced among negroes. Shortly before this, he had edited the Encyclopædia Americana. In that work he distinguishes the Caffre and Hottentot from the negro. In volume 6, page 447, it is said that the Hottentots and Bushmen are two distinct families to whom the Caffres are related. The Bushmen in volume 2, page 344, are described as very low and do not even form societies. His opinion of the *negro* is found in the same work. "The negro character, if inferior to the European in intellectual vigor, is marked by a warmth of social affection, and a kindness and tenderness of feeling which even the atrocities of foreign oppression have not been able to stifle. All travelers concur in describing the negro as mild, amiable, simple, hospitable, unsuspecting and faithful. The opinion formerly maintained that they were of an inferior variety of animals, would not now find an advocate or a convert, even in the ignorance or the worst passions of the whites. Whether they are capable of reaching to the same heights of intellectual cultivation as the Europeans is a question which we need more facts to decide."

But I will quote from another volume.

Mr. MURPHY—Will the gentleman from Oneida [Mr. T. W. Dwight], inform me from what work he quoted?

Mr. T. W. DWIGHT—From the Encyclopædia Americana, Dr. Lieber's edition.

Mr. MURPHY—He does not there admit the equality in intellect and capacity of the negro with the white man.

Mr. T. W. DWIGHT—He does not say. But I will read from another work of Dr. Lieber's, his Letters to a gentleman in Germany, page 290. He says:

"Whether the African race ever will have among them a Shakspeare, a Charlemagne or Aristotle, I know not; nor is it necessary to know this, in order to settle the question as to their political capacity for participating in all civil rights

and duties. There are many respectable colored persons with us, and I believe none will conscientiously deny that, when fairly educated, they stand on quite as high a level of mental development as the lowest of the whites, who are nevertheless admitted to a full participation in all political privileges: nor that the question under consideration would ever have been started, did the African race not differ from ourselves in color."

With this development and explanation, and this unfolding of Dr. Lieber's meaning, I say there is not a shadow of ground for believing that he entertains the view that the gentleman from Kings [Mr. Murphy] insists he does. I did not blame the gentleman from Kings or charge him with unfairness, but simply say that he has not studied this topic as he ought, and therefore he was precipitate when he rendered his opinion. I must still, without the slightest imputation upon him, say that he was precipitate, and by precipitate I mean that a gentleman should never speak on such a subject without a study of it; and especially when he charges a philosopher—a man who devotes himself to this class of studies—he should study the subject before he charges such a man with inconsistency.

Mr. MURPHY—Does the gentleman not understand from what he has read that Dr. Lieber maintains that the negro in Virginia and the Southern States is inferior to the white race?

Mr. T. W. DWIGHT—No, sir, all I understand is that he needs more facts to decide the question whether he can reach the same height of intellectual cultivation as the European; but he has, in his opinion, sufficient intelligence to vote.

Mr. MURPHY—He is not satisfied that the negro has the intellectual capacity of the white race.

Mr. T. W. DWIGHT—Not fully.

Mr. MURPHY—That sustains my position. I did not argue that he should not vote. I argued that he was inferior to the white race.

Mr. T. W. DWIGHT—The statement of the gentleman from Kings [Mr. Murphy] was that Dr. Lieber maintained "very distinctly the inferiority of the negro race in capacity, the ground upon which many who oppose negro suffrage base their opposition to granting the negro the right to vote." Instead of that Dr. Lieber says he has not fully made up his mind as to whether he can reach the same height of intellectual cultivation as the European, or not.

Mr. MURPHY—I simply quoted what Dr. Lieber had said in a published work, in which he claimed that the negro was inferior to the white race; what he may have written in the Encyclopædia Americana, I do not know. In what I read he gave reasons which are satisfactory to many minds why the negro should not vote.

Mr. T. W. DWIGHT—My answer to that is that he was not talking about negroes but Bushmen and Hottentots and Caffres. At the suggestion of a gentleman near me, I will again read the passage.

"The Caffres, the Boushuannes, (Bushman), the Hottentots, and the poor Papous, for instance, differ so materially in their anatomy and physiologic organization, from the races which comparative anatomy as well as the history of civilization

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slavery clause into the Constitution of the land, I was satisfied, in my mind, that political rights and full citizenship for the freedmen must follow sooner or later. I readily admit that, in certain States, this claim of new born citizens of the United States has, under a certain aspect, its alarming features, as it involves a more or less thorough revolution of the political and social state of the community, and works greatly to the disadvantage of the heretofore ruling classes of whites. If such unwelcome changes are among the fruits and consequences of treason and rebellion, who is to blame for it? Shall miserable prejudices carry us so far as to deny justice to the black man, who has proved true and remained faithful to the cause of the Union under the most trying circumstances, while those boasting of a great and patriotic ancestry stand convicted of the crime or fell into the criminal error of applying all their means and powers to destroy the inheritance of their own fathers? It must be remembered that the institution of human slavery, unfortunately existing in this country and at best to be tolerated only under a federal compact till otherwise ordered by the joint consent of the States, their representatives or the people thereof, that this institution of human slavery under the pressure of alluring material advantages became more and more aggressive every day, till it finally dared to commit high treason and to appeal to the sword. After a desperate four years' struggle slavery found itself routed, put to the sword and finally abolished. It is most natural that its advocates and defenders have now to accept the consequences of their crime, folly or error. It will not do for them, nor for us, to try to obliterate from man's memory or from the pages of history, the record of the events of the last six or seven years, and to fall back upon the record made by their fathers. They have written in blood their own record, and must be content to be judged by it. It is the most unpropitious and conceited position a man or party can take, if they endeavor to cover and hide the momentous present by an everlasting recurrence to a glorious past. This endeavor does not only place them in the wrong in the eyes of the people, who have sacrificed so much for the maintenance of the Union; it does not only cost them the respect of a progressive civilized age in which they live, but it makes them powerless to alleviate and mitigate, for the defeated and subdued, the cruel consequences of rebellion and war. However much we may hesitate or resist to acknowledge the overpowering influence of the events of the last decade on the future laws and destiny of the republic, it will nevertheless prove true that they will date much more from the surrender at Appomattox, than from that at Yorktown or the battle at New Orleans. The stubborn refusal by some of our leading men to read the signs of the times, to understand the temper of the people, and to assume a position at once to be followed by a return of the confidence of the people in their counsels is the main cause, that more moderate views and a more generous and forgiving policy did not obtain in our national councils. It is painful to me to indulge in remarks of this nature, but they

have been challenged by the maintaining of positions, the responsibility for which I cannot share. Mr. Chairman, I am by no means an enthusiastic admirer of the black man. To me, who has had ample opportunity to study the nature, the habits, the virtues and vices of the once enslaved race, it sounds rather odd to hear the fulsome praise now-a-days lavished on the negro in certain quarters. It will be long before the black man will, in reality, come up to the standard prepared for him in advance by the prolific imagination of those who seem to know least of him. I do not deny intellectual faculties to the negro; my opinion of him in that respect is not quite so poor a one as that held by Thomas Jefferson, according to the quotations made by the gentleman from Kings [Mr. Murphy], from Mr. Jefferson's works. Yet, however wide and extensive the intellectual compass of a negro brain may be, it is an undeniable fact, that in him the animal propensities are fearfully predominant, and that it will require long and careful training to make them subservient to a well-balanced mind and strong moral sense. As to the latter in particular, the black man is generally found woefully deficient, and it will go hard with him to place him under the same moral restraint as white people generally are, if only tolerably educated. For these and other reasons I should have preferred to educate the freedmen before placing them on a political equality with white people. Deficient as the education of a considerable proportion of white men may still be found, it is nevertheless the negro, if compared with them alone, who needs education most. Far more dangerous and hurtful, however, than the crude citizenship of a comparatively small number of voters of this State is to the public, will be the continued agitation of this negro question. As a matter of justice, and for the sake of good policy, I am therefore prepared to do away with this question now and forever. As to the particular mode to be applied toward so desirable an end, I have to say that the proposition of the gentleman from Ontario [Mr. Folger] seems to me the most rational one, although I do not admit of the soundness of some of the arguments against the proposition of the gentleman from Kings [Mr. Murphy]. Bring this question to a final decision in either way, and I shall be satisfied. I do not apprehend any danger for the new Constitution if the property qualification is incorporated in it, nor do I see any harm in a separate submission of the question. Gentlemen on one side may as well assent as not, without fear of injury or loss, to a separate submission, while the gentlemen on the other side will do well to beware of the false step of making it the decisive issue. Partyism should have nothing to do with the decision of this question. Without indorsing some of his arguments I am willing to give the proposition of the gentleman from Kings [Mr. Murphy] a fair trial before this body, and if possible before the people. Had I the least apprehension that the people of the State would so stultify themselves as to vote for the retention of that Bourbonistic freehold clause, I would not dare take this course; but I have a better trust in the intelligence of the people. Let me tell gentlemen who are haunted by the somewhat erroneous impression that the people

of this State have uniformly and unqualifiedly voted down negro suffrage, that circumstances have greatly changed since that time. Seven, and twelve, and twenty years ago when such voting took place, slavery was a live institution, recognized and protected by the Constitution of the United States; then the compromise measures, the fugitive slave law and similar federal and State enactments were in full force, and many conscientious and law abiding men may have hesitated, in spite of their anti-slavery sentiments, to vote for a proposition so repugnant to nearly one-half of the states of the Union, and so much at variance with inter-State comity. At present the case stands differently, and the same *causes* being no longer operative in a balloting on negro suffrage, it is not likely that it will be attended with the same *effect* as heretofore. But as I stated before, it is altogether a mistaken assertion that the people of this State have voted to keep negro suffrage out of the organic law of the State; they have, on the contrary, uniformly voted negro suffrage into the Constitution, coupled only with a qualification clause upon the merits and value of which the whole question turns at the present time. Has a single gentleman on this floor raised his voice in behalf of a retention of that qualification clause? I am not aware of it, and certain it is, that the gentleman from Kings, [Mr. Murphy], has, with decision and emphasis, expressed himself against it. At a time when the State was greatly in need of stationary and permanent settlers, and when it required a very small amount of money to secure a freehold estate, there may have been some reason for appending such a clause to the section on the right of suffrage; but at no time should it have applied to the colored men alone. In this wonderful age of steam and electricity, however, and at a time when man's capacity, wealth, worth and usefulness are no longer measured by the number of acres of land he owns, such a clause is worse than meaningless and unjust; it is absurd, and its retention a stigma on the intelligence of the people of this State. But if we have to erase it from the Constitution, what shall we do? Shall we do less than we did at a time when negro slavery was in full bloom in nearly one-half of the States of the Union? Shall we still do honor at so late an hour to an obsolete slave-code and reject the negro as a man and citizen? Who is advocating this course? Let me therefore entreat gentlemen to give the proposition of the gentleman from Kings [Mr. Murphy] a fair trial for the sake of impartiality and time-honored custom first, but if it should fail to secure a majority of the votes of this Convention, let us then adopt with unanimity the amendment of the gentleman from Ontario [Mr. Folger], thus recording ourselves in favor of unrestricted manhood suffrage in the Empire State, Mr. Chairman, before yielding the floor I ask to be indulged in a few remarks on the majority report of the Committee on the Right of Suffrage. In the larger cities, and I believe in villages and settlements not less, it has become customary that the subject of naturalization from year to year does not excite any particular attention after the meeting of the political parties in State Convention and the placing of the respective tickets be-



fore the people. The process of naturalization, that is, the taking out of the *first* as well as of the second paper is therefore principally reserved to the months of September and October of each year. My learned friend from New York [Mr. Daly], who is a judge of the court of common pleas, the gentleman from Kings [Mr. Barnard], and some others have fully explained the customary *modus operandi* in this process of naturalization, and have likewise pointed out the injurious effect of the proposed extension of time from ten to thirty days. It is therefore safe to say, that if this thirty-day clause of the majority report of the Committee on the Right of Suffrage is retained, more than one-half the number of all those who in 1866 have taken out their first papers and are by completing their naturalization in the fall of 1868 under the law of Congress and the Constitution of the State entitled to vote in November of the last named year, will, under this thirty-day clause be temporarily disfranchised: they cannot vote before the year of 1869; plighted faith is broken to them, and federal law and State Constitution are ignored in order to satisfy a mere caprice, for the so called evil or abuse complained of is not removed by the proposed remedy, but diluted only, or extended over a longer period of time. This being the fact, I desire to inquire in all candor and friendliness of the gentleman from Westchester [Mr. Greeley], whether in his opinion it is fair and just to ask several hundred thousand of naturalized voters, living in this State, to assist him to extend the right of suffrage to all the colored people in this State and at the same time to visit proscription, and temporarily disfranchise their own kinsmen? Has the gentleman from Westchester [Mr. Greeley] any reason to expect that any naturalized voter, not entirely devoid of self-respect, will sustain his thirty-day clause? If there is no reason to expect such self-pollution on the part of the adopted citizens, will the gentleman from Westchester [Mr. Greeley] nevertheless insist on his proposition and thereby take the responsibility upon himself of sealing beforehand the fate of the work of this body? Or does he not deem it better to accede to the amendment of the gentleman from Ontario [Mr. Folger] and thereby to do what is but just and right?

Mr. WAKEMAN—The immediate subject before this committee I understand to be the question of a submission of the question of doing away with the property qualification for the negro; but of the justice of a property qualification, and connected with the merits of the question, I propose, for a few moments, to examine the property qualification in its application. And just let us examine the property qualification as it stands. I suppose it has been adopted as a basis of intelligence, for it can be defended on no other principle; and as it has been recognized by the government of this State, that the colored man should vote, I take it that it was originally placed there as evidence of the intelligence of the voter when he should have acquired two hundred and fifty dollars worth of property. Originally, in 1777, it was applied to all men. In 1821, there were still restrictions on the white as well as the black man, but it was the same provision in 1821 as the amendment of the gentleman from Kings [Mr.

Murphy]; I believe it is the same language. In 1826 the entire restrictions were removed from the white man; and left this identical proposition now submitted by the gentleman from Kings [Mr. Murphy] in the Constitution as it stood. Now, let us look at it and see. On that principle a man that has two hundred and fifty dollars worth of real estate, free from all charges thereon, and who has been actually assessed, and paid taxes thereon, is a voter. Let us look at its operation. A class of men may be voters, and when the industrious citizen, under the Constitution of the State of New York, and by misfortune and by sickness he is compelled to meet his obligations like white men, and he mortgages that little homestead to fulfill the obligation he owes as a citizen, and as a man of honor, and when the assessor comes around, it turns out that his little homestead is not worth \$250, over and above the incumbrances and charges thereon, here you have it that a citizen, that is a voter under the Constitution, by means of misfortune, has been disfranchised, not by his act, but by the Constitution of the State. More than this, in consequence of the prejudice against him on account of his color, the incendiary may apply the torch to his building, and commit the crime of arson, and also bring him below the standard, and when the colored man comes to the polls, will gentlemen tell me he is not as intelligent and not as capable of exercising the right of suffrage then as he was before? More than this, sir, if the assessor fails to perform his duty, then he will be disfranchised under this amendment of the gentleman from Kings [Mr. Murphy]. Now, I know it is claimed by some that this right should not be extended to him, because he is inferior to the white race. Does it seem fair for us, if we claim that to be so, because he may be a little inferior than we are, to place a burden on him? Rather should we not lift him up to the standard of humanity, and try to bring him up rather than press him down. The farmers of this country don't treat their dumb beasts this way. If they have one horse weaker than another, they give the weak one the long end of the whiffletree. We will not reverse the order of things in this case. But the minority report and the argument of the honorable gentleman from Kings [Mr. Murphy], does not pretend for a single moment to defend the property qualification, but they say inasmuch as the people of this State have again and again rejected it, therefore it should be rejected again. If you look back a few years, and but a few years, you will see there has been a revolution going on in this country—a revolution that men and parties cannot stop—a revolution, sir, that has carried State after State, and State after State, against the party then in power and which had been in power almost from the formation of the government. And the party now in power has struggled hard against it, and yet this revolution is going on, and it will go onward until this principle is recognized in placing the colored man, where he should be by enfranchising him with the white man. Now, how was it a few years ago, when the honorable gentleman from New York [Mr. Colahan] referred a few moments ago to the poor, down-trodden slave

in Virginia, that could not tell who George Washington was, nor who Jesus Christ was. Why did he reflect for a single moment, that at that very hour it was a crime in Virginia to teach the poor colored boy that his Saviour died that he might live? Did he know then, that by the laws of Virginia, a female would be imprisoned if she should undertake to teach the poor colored boy to read and to write? Why, Mr. Chairman, if the white race had then been in bondage as long, and had been treated as we have treated the slaves in Virginia, would the poor white boy be able to answer all the questions presented by the gentleman from New York [Mr. Colahan]? It seems to me not, I say there is a revolution going on and it will still go on. Sir, it was but a few years ago that the "old man eloquent," John Quincy Adams, used to stand up in Congress and present petition after petition, for what? Not from the colored men, but from the white men and women of this country. For what? For the abolition of slavery in the District of Columbia, the only tribunal that had jurisdiction of the subject, and yet, under the Constitution of the United States, where it states explicitly that Congress shall pass no law, abridging the right of the people to assemble together peaceably, and to petition the government for relief; and yet, sir, these petitions were received, it is true, after a while, but unread and unrefereed they were put under the table. The glorious old man lived to see that rule abolished, and when he said "this is the last of earth" he had the satisfaction of knowing that the odious rule which was called the "Atherton gag" had been abolished. Time moves on. In 1850 the celebrated compromises were made, by which there was a finality put to the slavery question, and so thoroughly were the people convinced of this that the two great parties of the country in their nominations of 1852 made it a finality. But this revolution which is going on would not allow it to be a finality, for when slavery had gained that particular point in the controversy, then it was that the compromise of 1820 was attacked, and when that was repealed the party then in power were overthrown by a party based upon this repeal and against the extension of slavery, and from that, along up to the commencement of the war, this question has been going on steadily, but as surely as water finds its level. In 1861, after having elected a President upon this question, the South made war on the Government of the United States for the purpose of destroying this Union. And when we went into that contest, after seventy-five thousand men had been called into action, and three hundred thousand more, once and again, we undertook to fight it out by entirely ignoring the colored man. We would not, in the first place, allow him to dig our trenches for us, and at last, being hardly pressed by the rebels, we thought we had something that would give us relief. What was that? It was that we should treat him as contraband of war. That is, by the rules of war, we have a right to appropriate the property belonging to the enemy for our own use, and for a time we treated him as contraband of war, and allowed him to dig our trenches in place of

the white man. But time rolled along, and for more than one year the work progressed on this line, and yet our armies were not victorious. Why, sir? We had failed to recognize the existing fact, that the war was for the purpose of destroying the Union and establishing slavery as its chief corner-stone, and when the proclamation of Abraham Lincoln was proclaimed, it was not alone the Democratic party who were alarmed at it; many true and loyal men of the Republican party faltered on the wayside almost. They were fearful of its consequences upon the people of the North and of the South. Yet, sir, when that proclamation was made, and we commenced action under it, by allowing the colored soldier to take the place of the white man, and placed the musket in his hand, and when we called two hundred thousand of the black men and put United States uniforms upon them, then it was that the tide of battle set in in favor of the victorious North, and the Government. Until then, sir, we had the Bull Run defeats. Until then, the war being fought out on the other line was a failure. From that time, henceforward, we went right along from victory to victory, until the final triumph of the fall of Richmond. This shows to my mind that God still rules the destinies of nations. Now, Mr. Chairman, in the light of these facts, the facts of history, I ask whether public opinion is not prepared to-day to put the final finish upon this question forever. I ask my democratic friends on this floor, whether they are not prepared here and now to say that this question shall be disposed of. You can do more in this Convention in one day, if you will, than Congress, which is now sitting practically with this very question before them—I mean in the reconstruction of the government, for it involves that—for if the strong men of New York will only come up here along with us and say we now acknowledge the situation, and the question of reconstruction would be substantially settled. It would be said to those gentlemen who have acted with the gentlemen in the past that it is no use for us to struggle any longer, and we therefore acknowledge the situation, and they would most assuredly acquiesce in it. Thus by our action on this question we would encourage the loyal men of the south that they must submit to the situation, and seats that are now vacant in Washington would soon be filled. I was exceedingly sorry and felt somewhat pained, because I claim to be a humanitarian myself, to hear the gentleman from Kings [Mr. Colahan] speak on the subject of disfranchisement of the negro. Now let us see for a moment. I suppose that gentleman, coming from the old country, crossed the big waters to make it his home here in the land of his adoption. We have opened our ports; we have broad acres for the people of the oppressed nations of Europe to occupy and possess, and I was sorry to hear him take ground against the oppressed negro men, born on American soil, from enjoying the right of the elective franchise. I always extend to those men a welcome, without a thought of attaching any property qualification whatever. But it seems to me

that if I had left my country and sought an asylum in another country under another government, I would be less than a man, if I were to raise my voice in a constitutional Convention against a native of that country from enjoying the same right that was accorded to me without a property qualification of two hundred and fifty dollars. I should rather feel like lifting up the oppressed I should find in the land of my adoption. You and I, Mr. Chairman, are proud of our country and our home. It is no merit of ours that we were born here. The man who comes across the waters to America, comes from choice and adopts it with all the privileges thereto belonging. It seems to me that if I was placed as those persons are, it would be my pleasure to speak in favor of the oppressed I should find in my adopted country. But let us look at the operation of the law. Suppose a foreign born citizen approaches the polls, and a preliminary challenge is made. What does he do? The question is asked, "Where were you born?" "Ireland, sir." "How long have you been in this country?" "So long." And they go on and ask him if he had been naturalized, and he produces his naturalization papers without any property qualification at all, and it appeared that he had been naturalized just ten days before the day of the election, when he had sworn allegiance to our government for the first time and had renounced his allegiance to his mother country. Well, sir, is that man admitted to vote? I say he is. He is, for my country gives him the right to vote when he is entitled to citizenship. But let us pursue this a little further. Suppose a colored man should approach the polls and offer his vote. And suppose, sir, the question was put to him: "Are you possessed of \$250 worth of real property, and have you been actually assessed and paid taxes thereon?" "No, sir; but I was born in the city of Albany; I have been in the service of the Union Army; I was at the battles of Coal Harbor and the Wilderness; I was with Gen. Wadsworth when he fell pierced with rebel bullets, and I wiped the cold death sweat from his noble brow while his life's blood was moistening the sacred soil of Virginia." More than this—"Sir, I was with that colored regiment when they marched into Richmond and I there bore aloft the stars and stripes of my country; true, those stars and stripes had been tattered and torn, and stained with the blood of my countrymen, yet I was there and upheld them at the hour that the rebel capital fell." "This will not answer, Sir." Very well, then he takes from his pocket his naturalization papers and presents them with the broad seal of the United States marked upon them. It turns out, however, to be a certificate of pensions, granting him a pension for wounds received in battle in the service of the United States. By this time the inspector gets a little nervous, and he says: "Sir, I must inform you that the people of New York met in Convention in the city of Albany in 1867, and they there re-enacted and adopted the same provisions that had been adopted in the Constitution of 1821, a period of more than forty-six years ago, and that Convention, in order to get together the assembled wisdom of the State, went beyond all precedent and called into action of the Convention, thirty-two honorable gentlemen and statesmen of both parties in the State, so that we should have a Constitution presented free from faults, and that had some progressive features in it." What is the result? Why, these men being selected from the parties throughout the State to aid the district delegates, at last have brought forward the same identical proposition, and thrown it into this Convention for an action ignoring the great past, ignoring all past history, and when that proposition is placed here, there is not one of them that will defend the bantling at all. The gentleman from Kings [Mr. Murphy] says. It is no proposition of mine. "I found it in the Constitution of 1846" or in other words, he found the bantling on his steps, and it has been there for the last twenty years and he throws it in here and says, I want to submit it to the people,—don't charge it upon me. I want that some one should father it before I am willing to submit it to the people as a separate proposition; for as the gentleman from New York [Mr. Gross] said he has heard no man defend the principle, nor can it be defended. The gentleman from Kings [Mr. Murphy] says it cannot be defended on principle, and yet they ask us to submit it to the people. I cannot for one submit any such question as that, unless it has some principle in it, and one that commends itself to my heart and my vote. I, sir, am in favor of disposing of this question now—putting an end to it forever. It is a mere question of time. If we struggle against it, we shall soon be carried off and swept away with it; for I tell you, sir, this revolution is still going on and will go on until justice shall be done to the colored man. I remember a few years ago in my own district, just above Niagara Falls, a poor German had been lost overboard and had caught on a log or something just above the yawning gulf below; he struggled manfully, for a long time, knowing his certain fate, for no human aid could be rendered to him; finally he gave way and went over the precipice. Just so sure, sir, as that water rolls, we have got to enfranchise the colored man without any property qualification, and the men who struggle against it will be carried over the falls of public opinion and be dashed to pieces. Suppose in the Constitution we shall adopt we take manhood suffrage and put into it, saying nothing about white men and nothing about black men, but say all men—every man of twenty-one years of age, and with certain other qualifications, shall vote. Does not that look manly and bold, to recognize a man—a man is a man; and if the colored man is not a man, he cannot vote under such a Constitution. But if by reason of any prejudice, this Constitution should be voted down with that in it, the epitaph over it will be "not dead but sleepeth." Because it would be but a short time before it will come upon us again and again, until it is disposed of. We can then turn our attention to other questions of State. I am opposed to the separate submission of this question, because I believe it to be right to do the thing we are sent here for, and I believe the colored man has a right to demand at our hands that we shall abolish this qualification.



And I believe, sir, as we placed the musket heretofore in the hands of the colored man in the hour of our country's peril, we should now place also the ballot in his hands. I like myself to be called a humanitarian, I am willing that all men should enjoy every blessing of heaven that I enjoy myself, and there is something beautiful in the idea, if we make a Constitution in all its parts, recognizing manhood wherever we find it. There is something in it that suits my constitution exactly. Look at it. All men, sir, it is like the commencement of our Lord's prayer. "Our Father," not "my father"—I want to have a oneness and a singleness of purpose by which manhood everywhere can be leveled up and not leveled down. When we have disposed of this exciting question, and we can get the negro out of politics and all the questions connected with it, what a country we can present. Reconstruction will be complete. This country must ever remain one. That has been settled, sir, by the prowess of our arms. Look at it; what a glorious country if we could get this question out of it—the North and South, East and West all one country, and all of us recognizing as second only to God, the supremacy of our government, and the Constitution of the United States. Not subordinate to the State governments but each State coming in its place, forming a great arch, and carrying out the democratic theory of government. The various portions of our country all together presenting themselves, it would produce a glorious effect. My democratic friends, many measures of your policy have been adopted as the principles on which this government shall be administered, and they will stand forever. We want your counsel and aid, to help carry out this principle of self-government, and I believe if you will take hold with me and the rest of us, you can put the finish to this question now and forever. The men behind us, the voters behind you will do as you say, the strong men are here, the sachems are here. This Convention can give the final touches. Let us do it and finish it right here and then in a very short time we can live in one country and under one Constitution, and hope sir, but for one destiny.

Mr. WEED—I desire, sir, to make some remarks upon the subject, but as it is near the ordinary time of our adjournment, I will move that the Committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Weed, and it was declared carried.

Whereupon the committee rose, and the President resumed the Chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, and had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. BELL—I move that the Convention take a recess until half-past seven o'clock this evening.

Mr. FOLGER—I move to amend that by making it at four o'clock P. M.

Mr. ALVORD—I move that the Convention do now adjourn.

Mr. M. I. TOWNSEND called for the ayes and noes on the motion to adjourn and a sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion to adjourn, and it was declared lost by the following vote :

*Ayes*.—Messrs. C. L. Allen, N. M. Allen, Alvord, Armstrong, Baker, Barnard, Beckwith, E. Brooks, E. A. Brown, Burrill, Cassidy, Champlain, Cherritree, Cochran, Comstock, Conger, Corning, Curtis, Daly, T. W. Dwight, Endress, Fowler, Goodrich, Gross, Hale, Harris, Hitchman, Jarvis, Kernan, Ketcham, Larremore, Law, Livingston, Magee, Masten, Mattice, Murphy, Nelson, Opdyke, Paige, Pond, Priudle, Prosser, Rogers, L. W. Russell, Schell, Schoonmaker, Schumaker, Smith, Tappen, S. Townsend, Van Campen, Veeder, Verplanck, Weed—55.

*Noes*.—Messrs. A. F. Allen, Andrews, Archer, Axtell, Ballard, Barker, Barto, Beadle, Bell, Bickford, Bowen, E. P. Brooks, W. C. Brown, Carpenter, Case, Chesebro, Colahan Cooke, Corbett, C. C. Dwight, Eddy, Ely, Farnum, Ferry, Field, Flagler, Folger, Frank, Fullerton, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Hitchcock, Houston, Huntington, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Lowrey, Ludington, Mc Donald, Merrill, Merritt, Merwin, Monnell, C. E. Parker, Potter, President, Rathbun, Reynolds, Rolfe, Root, Rumsey, Seaver, Silvester, Sheldon, Sherman, Stratton, M. I. Townsend, Tucker, Van Cott, Wakeman, Wales, Williams—69.

Mr. GREELEY offered the following resolution :

*Resolved*, That the debate in the Committee of the Whole, on the report of the Committee on Suffrage and the Qualifications to Hold Office, be closed at one o'clock to-morrow.

The PRESIDENT—The resolution will be received at the proper time. The question now is upon the amendment of the gentleman from Ontario [Mr. Folger].

Mr. BARTO moved to amend so as to make it seven o'clock.

Which was lost.

The question was then put upon the amendment offered by Mr. Folger, and it was carried.

The question was then put on the motion of Mr. Bell as amended, and it was declared to be carried.

On motion of Mr. AXTELL, the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock.

Mr. ALVORD asked that the roll of the Convention be called.

The SECRETARY proceeded to call the roll of the Convention, and it appeared that the following delegates were present.

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barnard, Barto, Beadle, Beckwith, Bell, Bickford, E. Brooks, E. P. Brooks, E. A.



Brown, W. C. Brown, Burrill, Case, Cheritree, Chesebro, Clark, Clinton, Comstock, Conger, Cooke, Corbett, Curtis, Daly, Develin, Duganne, C. C. Dwight, T. W. Dwight, Ely, Endress, Evarts, Farnum, Flagler, Folger, Fowler, Frank, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond, Houston, Huntington, Hutchins, Jarvis, Kernan, Ketcham, Kinney, Krum, Landon, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Livingston, Lowrey, Ludington, Masten, Mattice, McDonald, Merrill, Merwin, Mouell, Murphy, Paige, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, A. D. Russell, L. W. Russell, Seaver, Seymour, Silvester, Sherman, Smith, Stratton, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Campen, Verplanck, Wakeman, Wales, Weed, Yonug.

Mr. GREELEY—I ask a suspension of the rules, if it be necessary to introduce this resolution: "*Resolved* that—

The PRESIDENT—The Chair will inform the gentleman that the rules cannot be suspended except upon one day's notice.

Mr. GREELEY—Then I will ask the unanimous consent of the Convention to introduce this resolution: "*Resolved*, that the debate in the Committee of the Whole.—

SEVERAL DELEGATES—I object.

The PRESIDENT—By the rules, the regular call of the Calendar should be proceeded with until the order of unfinished business is reached. But there being no objection, this will be passed and the Convention will resolve itself into a Committee of Whole—

Mr. CONGER—I hope not, Mr. President. The Convention took a recess and not an adjournment.

The PRESIDENT—The Chair will state that the question was put to the Convention before the adjournment on granting leave to the Committee of the Whole to sit again and leave was granted. That order of business had been completed. By the rules of order the next order of business is special orders and then general orders.

The PRESIDENT proceeded to call special and general orders in the order of business.

Mr. TAPPEN—I move that the Convention resolve itself into a Committee of the Whole on the report of the Committee on the Legislature its Organization, etc.

The PRESIDENT—That report having been made to-day, it is now in the hands of the printer.

Mr. ALVORD—I was just going to observe that I believed it would not be in order to consider the report of that committee in Committee of the Whole until it was printed and laid upon the tables of members.

The PRESIDENT resumed the call of the order of business.

Mr. DUGANNE presented the petition of Hugh Gardiner and 172 others, citizens of New York, in favor of prohibiting the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. ALVORD—I move that all other order of

business except the unfinished business of general orders be laid on the table.

Mr. GREELEY—I object as I want to offer a resolution.

Mr. ALVORD—I made a motion, Mr. President, that all order of business be laid on the table except unfinished business of general orders.

Mr. DEVELIN—That requires a two-third vote, does it not?

The PRESIDENT—The Chair will read the rule governing the order of business. It is as follows:

"The first business of each day's session shall be the reading of the Journal of the preceding day and the correction of any errors that may be found to exist therein. After which, except on days and at times set apart for the consideration of special orders, the order of business, which shall not be departed from except by unanimous consent, shall be as follows," etc.

Mr. KERNAN—I rise to a question of order. When a recess is taken, are we not, when we assemble again, in the same position as we were when we adjourned?

The PRESIDENT—The Chair will hold that the order of business had been concluded when the Convention took a recess.

Mr. GREELEY offered the following resolution:

*Resolved*, That the debate in Committee of the Whole on the pending amendments be closed at five o'clock P. M. this day.

Mr. DEVELIN—I propose to debate that resolution.

The PRESIDENT—The Chair will inform the gentleman from New York [Mr. Develin] that the resolution can be now acted upon by the Convention, inasmuch as it relates to the business before the Convention and the business of the day.

Mr. E. BROOKS—If it be in order I move to lay the resolution upon the table.

The question was then put on the motion of Mr. Brooks and it was declared carried. A division being called for, the motion was sustained by a vote of 53 to 28.

Mr. DUGANNE offered the following resolution.

*Resolved*, That the Committee on Currency, Banking and Insurance, and the Committee on Corporations other than Municipal, Banking and Insurance, be directed to confer together and report upon the expediency of providing for the creation of a State Department or Bureau of Corporations to have jurisdiction over all proper matters involving the public interest in banks, insurance companies and other joint stock corporations organized under the laws of the State, by special incorporation or charter, and requiring that all such joint stock corporations shall render annual statements of their affairs to be embodied in a report to the Legislature.

Which was referred to the committees named in the resolution.

Mr. W. C. BROWN—I move that the debate on the pending amendments be closed to-morrow afternoon at 12 o'clock.

Which was laid on the table.

The Convention then resolved itself into a Com-

mittee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. Alvord, of Onondaga, in the Chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Murphy, to the substitute offered by Mr. C. C. Dwight for the clause reported by the Committee.

Mr. WEED — The question pending before this Committee has been so fully discussed that no member can take the subject up and give it a full consideration without repeating much that has been said; I, therefore, at this time, knowing that the Committee are wearied with the debate on this subject, shall not attempt to fully discuss the questions involved in the majority and minority reports of the Committee on the Right of Suffrage, and the amendments pending before the Committee to the article reported by the majority. I deem, Mr. Chairman, many of the positions taken by the different gentlemen who have addressed this committee entirely outside of the pending question. The range of discussion has been very broad, and many subjects that seemed to me to be more fit for party issues in a party contest before the people have been discussed than were pertinent to the question at issue before us. I regretted, Mr. Chairman, to see these discussions. I regretted to see political lines attempted to be drawn, and political issues attempted to be forced upon this Convention. I regretted it the more, Mr. Chairman, because for the first few weeks of this session we were so honeyed towards each other; we were to have no political difference; questions of party politics and party policies were to be thrown out of this Convention, and we were to meet here as men to discuss what was best for the State, and after a thorough and candid discussion to submit our deliberations to the people. We find, however, that upon the first question that presented itself to this body, certain persons in the majority have cried out that all men who have acted with the democratic party must be in the wrong upon this, and if we may judge from inferences, upon every other question that is before this Convention, have at once raised party issues. In some of these gentlemen I was not surprised. The youthful ardor of my friend from Onondaga [Mr. Corbett] would lead his eloquent tongue off into such paths. The earnestness of my friend from Rensselaer [Mr. M. I. Townsend], and his continued discussions on political questions would lead him in that direction. And my friend and colleague from Clinton [Mr. Axtell] by his profession is naturally thrown into the confused pool of politics, and, naturally, led to indulge in political animosities and criminations; but that the humanitarians of this Convention should have taken political ground upon this subject, and made stump speeches, for political effect, upon this question did surprise me, and has surprised many, and it is with regret that I see those gentlemen avoiding the real question at issue before this committee, and attempting by sensation discourses to draw our minds from the pending proposition. I trusted that the provisions of these gentlemen—of all gentlemen upon this floor, made at the commencement of the ses-

sion were in earnest. I have no doubt they were so intended, and I deeply regret that we have, any of us, departed from those professions. Now, Mr. Chairman, as I look upon this question, it is very simple — very simple indeed, and I will attempt briefly to show that it is simple, and I cannot for the life of me see how men sitting here in their seats, desiring that the people of the State should govern and control these questions, desiring a submission fairly, honestly and squarely, to the people of the State can come to but one conclusion upon it. The individual opinions, Mr. Chairman, of any member of this body, have nothing to do with the questions pending before it, and ought not, I suppose in strict Parliamentary law, in pursuance of a strict rule, to be forced upon this Convention; and if other gentlemen had not spoken their individual sentiments and opinion upon this subject, I should pass from the subject entirely, and I only refer to it now that I may be placed right upon the record, and that it may give more force to the position that I take with reference to this question of submission — as I had the pleasure to state before this committee some days ago in reply to an answer, to a question I put to the gentleman from Columbia [Mr. Gould]. I am in favor of abolishing the property qualification that prevents negroes in this State from exercising the unlimited and unrestricted right of suffrage. I, in common with many other democrats in this State believe that the negroes of this State to-day are competent to exercise the elective franchise. I desire that the property qualification that prevents them from exercising it to its fullest extent may be swept from our Constitution. I desire to see at the polls in November, a submission of that question to the people, and I hope to see it carried by an overwhelming majority. From this point of view, believing, as I do, that the negroes of this State are entitled to vote by reason of their intelligence, that they are in this State, whatever may be their condition in other States of the Union, educated up to a proper amount of intelligence so that they are entitled to vote and can be safely allowed to participate in the government of the State. Believing in this position, I approach this subject of submission, as the only subject before us, without bias and only desire that it shall be submitted in the best possible manner. How then are we to submit this question to the people, that they may take it and determine it? And in discussing this question, I need but for a moment reiterate the statement made by so many, and so clearly of the position of the question before us. The pending amendment offered by the gentleman from Kings [Mr. Murphy] provides for an independent submission of this question to the people. It does not, as stated by the gentleman from Genesee [Mr. Wakeman] incorporate any new element in the new Constitution. It does not pledge the party that the gentleman from Kings is an honored representative of, to a submission of a property qualification for electors to the people of this State. It is his idea of the mode in which this question should be submitted to the people. I am frank to say, Mr. Chairman, that I cannot support his amendment. I am as I have said, in favor of a

separate submission. I desire and believe it is eminently proper, just and right, that a separate submission of this question should be made to the people of this State. But I do not like the form in which the gentleman from Kings [Mr. Murphy], puts it. It may be that the form of the proposition is simply a question of taste, supposing it to be submitted as a separate proposition; still I think that the objections to this form, taken by some who have spoken against the proposition of the gentleman from Kings [Mr. Murphy] may be a sound one; that it would tend to give the weight of this Convention against the proposition. I do not wish for one to have it placed in any such position. I wish a square independent amendment submitted upon this question of suffrage. I wish it submitted with the force of the majority of this Convention in favor of the principle—the majority in numbers I speak of, not political majority. I wish it so framed; and if some other gentlemen do not, when the proper time comes, I myself will offer such an amendment, submitting the question fairly, submitting a section with the property qualification left out, and providing that that should be the Constitution of the State of New York, upon this subject, if it is ratified by the people, and if it is not ratified by the people then, the Constitution upon this subject must stand as it is to-day. This must be the result, in whatever form the submission is made, if it is not ratified by the people. And in this view it seems to me, with this idea of separate submission, no gentleman upon the floor of the House can object. It would bring the subject in a simple form directly before the people. It would give any man, no matter whatever his views may be upon any other question submitted; whether he could or could not sustain the Constitution as a whole, whether he had a special objection to any portion of it, an opportunity to walk up to the polls and cast his vote upon the question intelligently, honestly and fairly. Let us see, Mr. Chairman, what the objections of the political majority of this Convention are to this proposition—to this separate submission. Why do they wax so eloquent against it? Why does one gentleman say that it would be cowardice in this Convention, cowardice in their political party, to make a separate submission of this question? Why do I see proscription of certain members of that party, who feel as I feel, that it should be submitted separately? Is there something behind this proposition to submit? If gentlemen are so anxious to defeat a separate submission that they will resort to their eloquence, that they will prescribe the members of their party who do not come up to their views, is there not something back of it that they desire? Do they desire to hold up some of their own peculiar plans and projects by this question? Do they desire to go before the people upon this question of suffrage, and compel the people upon this question to swallow other matters that may be submitted to them in this Constitution that would otherwise be defeated? Is it for the reason that there are party questions, that there are party policies, that there are local questions and local policies, that are proposed to be driven

through with this question of negro suffrage? I believe that the great bulk of the political majority of this house believe that the negro suffrage question at the polls will be carried by a majority if separately submitted. I think if that question is submitted by itself, it will be carried, and carried by a large majority. And I am forced to the conclusion that the gentlemen in the majority upon the floor of this Convention believing so, with me, are actuated by some other motives, not acknowledged in this debate. I believe with the eloquent gentleman from Onondaga [Mr. Corbett], that the people will extend the right of suffrage to the black man, and I am not afraid to submit the question to the people. I do not fear but that they, as well as the gentleman from Onondaga, will keep time to the music of the Union, as he says, upon this subject. They will go to the polls and decide this question for themselves, and it seems to me, I cannot separate it in my mind, that there is some hidden object, some reason that we do not see upon the surface, some reason that they do not give us openly and fairly, why the majority of this body are bound to submit this question in with the body of the Constitution. Either this is so, or, Mr. Chairman, it may be that the gentlemen composing the majority of this body fear that negro suffrage, submitted as an independent proposition, would be defeated by the people of the State. I am aware that the gentleman from Clinton [Mr. Axtell], my colleague, takes that distinct ground, as a representative of the majority.

Mr. AXTELL — I beg leave to correct the gentleman. I have not taken the ground that it would be defeated, or very likely to be defeated.

Mr. WEED — I was prepared for the interruption for from the second or third speech that the gentleman made on this subject, I saw that he was taking in sail gradually, but I supposed he had not come to the point to deny, and I have before me the remarks of the gentleman which I will read on that subject. He says:

"I grant, sir, that if you were to submit this question as a distinct proposition to the people of this State it might possibly be defeated. And why? Because, sir, unfortunately, in connection with the principle of manhood suffrage which is imbedded in the public mind, and which will continue to be imbedded there, we cannot rule out certain criminal classes who will vote against extending the right of suffrage to the negro. That is all sir. The gamblers of the State will vote against it. All that class of persons who are notorious criminals, and who are always at the polls will vote against it. \* \* \* But, sir, as I have said, there is a class of persons who have still a prejudice, and who deny to colored men rights that they would have themselves—are the class who murdered and burned negroes in the riots in New York in 1863. These are the men, generally, who, if, the question were untrammelled by party and party influences, who would vote against the extension of the right of suffrage to the colored man."

He says then that if it is not put in the body of the Constitution, it may be defeated.

Mr. AXTELL — The gentleman said, as I



understood him, that I had said that it would be likely to be defeated. That is not what I said, nor has he made that statement good, as I understand him.

Mr. WEED—I stated in substance what I have read from his remarks. I said that gentlemen on the other side of the House, and the gentleman from Clinton [Mr. Axtell], has said that they voted for a submission of this question in the body of the Constitution, because it might be defeated if separately submitted, and proceeded to give the reasons why it would be likely to be defeated, and those were substantially the words used by the gentleman.

Mr. AXTELL—Will the gentleman allow me to correct him again? I submit to this committee that there is no such statement in my words, and no such inference can fairly be drawn, that I feared it might be defeated.

Mr. WEED—The technicality of the gentleman's words is, evidently, not a matter of interest to the committee. If the gentleman can deny that the legitimate conclusion of his words are that the reason he voted for putting the negro suffrage question into the body of the Constitution was that it would be more likely to be carried than if it was a separate proposition, I have no objection. If he will come up and say that he did not so state, and take back the words I have read, I will acquit him. If not, the words show that the reason that actuated him in his vote, was that he feared, whether he used the word or not, that it might be defeated if separately submitted. But I ask the majority of this Convention, for it seems to me that is the only rational reason that can be given (if they are acquitted of a desire to carry through other matters with this proposition), if they are prepared to assume the position of the gentleman from Clinton [Mr. Axtell] as their position upon this question, that they, the representatives of a great party of great principles, as they call themselves, and believing in the people, dare not go before the people with a single proposition of this kind, dare not submit the question of negro suffrage to the electors of this State, without complicating it and twisting it up, and tying it up with other issues. It is in that unfortunate position that I see the political majority of this body. It is in that position that I regret to see them, because, as I have said, it is not a political question. I see them holding out to the world that they need other issues linked with this issue to procure its adoption. I see them holding out to the world the flag of truce, saying that they fear to come before the people of the State of New York upon this one distinct issue. I here see them saying upon this one issue alone we may be defeated, although we have a political majority in this State.

Mr. MERRITT—Will the gentleman from Clinton [Mr. Weed] allow me to ask him a question. What proposition is it proposed that the political majority of this Convention desire to carry through by submitting it in the Constitution? One other. Has it been proclaimed upon this floor? If so, I would like to be informed. I ask simply for information.

Mr. WEED—Mr. Chairman, it has been my habit in this world, when I see men going back

upon themselves, when I see men refusing to "take" as I will call it by a very homely phrase, "the bull by the horns," when I see them failing to walk up and meet the issue distinctly, and trying to complicate it and mix it up with other issues, to suppose that there is some reason for it. I see the republican majority of this house in that condition. I see them fearing to take this matter squarely to the people, and I at once look for the reason. I don't know what that reason is, but I say this, it can be but one of the two that I have mentioned. If the gentleman, as I have no doubt he will, will deny that it is from cowardice that he refuses to submit this question separately, then I say here in my place that I cannot see any other reason, except it be to carry through with it some political or local projects, and I say that it is a direct consequence of that state of facts. I do not know what those projects are. I trust there are none. I hope the majority of the house and the minority together will submit this question separately, and by an unanimous vote, to the people. I trust that they will not, as I was about to say, place this question before the people in a way that speaks to the people as follows: we cannot trust you to decide upon this question for yourselves. I believe in the position taken by the honorable gentleman from Oneida, upon the question of the natural rights of suffrage. His argument upon that subject meets my views more fully than any other gentleman's upon the floor of the Convention. I hold that in the people of the State of New York rest to-day the right to say who shall and who shall not vote. I believe and have always believed that that right rested in the people of every State, and I hold that to be the democratic doctrine.

Mr. GREELEY—I would like to ask the gentleman who are the people that have a right to decide whether other people shall vote or not.

Mr. WEED—I am happy that the gentleman has asked that question. They are the people who under the Constitution of the State of New York have a right to the elective franchise. They are the only people—I do not believe in any higher law, and I do not believe in any political right above the rights that we as the people of the State, as the community, are entitled to. I believe the people of the State who have the right under the present Constitution, are the people, and the only people in a political sense, and every man it seems to me must, unless he cuts himself entirely loose from all Constitutions and from all laws—unless he says that I do not believe in any political or civil organization. It seems to me that there can be no doubt, but that the people who to-day have the right of suffrage in this State under the Constitution of the State, and the Constitution of the United States are politically the people of this State, and it is for them to say who shall vote, whether they will extend or restrict the election franchise, and I, as one of those people, simply express my opinion that that elective franchise can with safety and propriety be extended in this State to negroes. And I have more faith in the people of the State of New York than other gentlemen who have spoken on the other side. I have



more faith than the gentleman who last addressed me [Mr. Greeley]. I believe, as I have said, that the people of the State of New York, if this question is fairly submitted to them, have made up their minds upon it and will decide it in the affirmative. If they do not, I would ask the gentlemen upon the other side, what is the remedy? Does the gentleman from Westchester [Mr. Greeley] propose to appeal from the verdict of the people? And if in case this Constitution is submitted and voted down by the electors who vote at the next November election, does he propose that the negroes shall vote, whether the people say they shall or shall not have this right?

Mr. GREELEY—I would like to answer the gentlemen now. I propose that the black citizens shall vote this fall by the action of this Convention, on the ratification of its action, and that will be according to the precedent of the Constitution of 1821, which was likewise submitted to be ratified by the men whom that Constitution enfranchised.

Mr. WEED—I would like to ask the gentleman a question. Does he propose to allow them to vote in violation of statute?

Mr. GREELEY—I suppose that the Constitution is above the statute.

Mr. WEED—I suppose the gentleman does not care for the statute and if he was discussing the statute he would not care for the Constitution. [Laughter.] I am not above the statutes of the State, nor am I above the Constitution of the State. I believe that the people who, under the statute and the Constitution, have the right to vote, will determine this question and that they alone have the right, and when they have determined it, I suspect that the gentleman from Westchester [Mr. Greeley] and myself, however much we may dislike it, will have to submit and abide by the decision of the people. And I tell him and the other gentlemen acting with him, that if he does not know now, who the people of the State are he will find out when they pass upon this question and it becomes a part of the organic law of the land. Let me say a word or two more in reference to the question he asks. Who are the people? Of course, in determining this question if we disregard the Constitution and the Statute, and do not refer to enfranchised citizens, then the people of the State are the living, moving, breathing human beings, and if that is what he means by the people, I wish to ask him the question, whether he proposes that the women shall vote upon the question of the adoption of the Constitution we are to frame for submission.

Mr. GREELEY—Certainly, if we decide to enfranchise them, I shall insist that they be allowed and authorized to vote on the adoption of this Constitution.

Mr. WEED—The gentleman goes deeper and deeper every step. Our action here cannot affect the right of the people. If women, then, because they are a part of the "people" are entitled to vote upon the question of adopting this Constitution, then they will have the self same right to vote upon it if we do not enfranchise them. We give them no additional rights by submitting to the people of the State a proposition that may emanate from us as

a Convention, and the people of the State, to whom we are by law compelled to submit our conclusions, are the legally qualified electors and qualified voters of this State to-day, not the negroes or the women, because under the Constitution they cannot exercise the elective franchise. I return then, Mr. Chairman, to my proposition and say that there can be but one of these two reasons why the majority refuse to submit this question separately. Gentlemen ask: why not submit every other proposition by itself? Now, Mr. Chairman, I think it should be so, and believing as I do in the virtue and capacity of the people, I think that every proposition that can be fully and intelligently submitted to the people, every proposition not so complicated but that the people may walk up to the polls and vote upon it understandingly, should be submitted to the people of this State for their adoption, separately. But I see a marked distinction between this question and any other question, that can be or will be submitted by this Convention to the people. That distinction, Mr. Chairman, is this: we may not be able to disentangle from the Constitution we may frame here, the executive, legislative or judicial system; it may be framed by this Convention upon one great scheme, or in pursuance of one peculiar governmental policy, and so interwoven among themselves that it will be almost impossible to submit them separately—so interwoven that they will not harmonize if one is adopted and the other rejected, and for this reason it may be that we cannot submit these propositions separately. But when you come to this question of franchise, it has nothing to do with the scheme of State government: it has nothing to do with the formation of a Constitution under which we may carry on the government; it is entirely independent of it, and it covers simply the question as to who shall, under that Constitution, exercise the elective franchise, and participate in giving effect to its provisions, if the remainder is ratified, or if the remainder is defeated, then who shall exercise the right, under our present Constitution. In that view of the case, it ought not to be trammelled in any way by a joint submission with other questions. It cannot be affected except improperly, by any other clause in the Constitution. It must rest upon itself, and be an independent proposition, suggesting itself to every man's mind, whether or not he believes that the negroes of this State are sufficiently intelligent to exercise the elective franchise. If he believes they are, it is the duty, the right and the privilege of every man in the State of New York who is a voter in November next to deposit his vote in favor of that proposition. If he believes that they are not—honestly believes it—it is his right, his privilege and his duty to vote against it, whatever may be the effect upon the political organization that he may vote with. It is a right that he has to vote upon this question, yes, or no. Let us see if he has that right under a general submission of the provisions we may adopt in this Convention. I asked a question of the gentleman from Columbia [Mr. Gould] the other day, which, it seems to me, is quite conclusive upon

that subject. I asked him how he could, conscientiously, go to the polls and vote upon this question, if there was embodied in that Constitution, something that he could not give his honest assent to—would he not be put in the position of voting directly for that which he knew to be wrong, or else voting against negro suffrage, which he believes to be right, and to vote against which, I know from his remarks, would give him great pain. He wisely avoided answering that question—

Mr. GOULD—Will the gentleman allow me to explain. I was not at all aware of avoiding any question whatever. When I replied to the question, I was arguing that no intelligent democrat would desire to vote against that proposition. That was the reason I assigned why there should be no separate submission and the gentleman himself responded to me at once, that he would not desire to vote against it. I supposed, sir, I had given the most full and ample answer. If the gentleman still desires me to tell him why it is impossible to submit this question without a fraud upon the voters, I will do so now.

Mr. WEED—I shall be very happy to have the gentleman do so, unless he is going to repeat what he said the other day and take half an hour. If so I shall have to object.

Mr. GOULD—Five minutes will do it.

Mr. WEED—I shall be happy to give the gentleman five minutes.

Mr. GOULD—Then I say, a separate submission is an absolute fraud upon the voters of this State, and let me take a single illustration, which, I think, will convince the gentleman himself. Suppose, sir, that the gentleman from Albany [Mr. Harris] should bring a proposition into this Convention, that the Baptist Church, of which he is an honored and distinguished member, shall be made the religion of the State, and suppose this Convention resolves that this question shall be submitted to the people of the State. How am I going to vote intelligently upon that question. I agree *ex animo* to every single line and letter of the Constitution as it stands and if nothing but this Constitution is to be enacted by the people, I agree to it most heartily and believe it is a very great improvement upon the Constitution we now have. But how am I to vote upon that provision of the Constitution, I do not want any Baptist Church as the State religion, or any other church and if that should be by any contingency be interpolated in the Constitution, it will be like the fly in the ointment of the apothecary, which shall cause every portion of it to stink in my nostrils. And if I desire to vote upon the Constitution which I fully approve, and believe that the intelligence of the people of this State will at once vote down this doctrine, yet I may find myself mistaken, and I may find, although I have voted for the Constitution, yet I have absolutely, by the contingency of the separate submission of that question, been voting to impose upon the people, a thing I utterly abhor. But let us take the very question before the committee. We all know who it is that opposes the "nagur vote," we may vote for it in Convention and we may submit the Constitution,

we shall provide separately to their judgment, and they may labor under the impression that this negro suffrage question will be voted down, and under that apprehension they may vote for the Constitution as proposed, and it will be a fraud upon our Irish fellow citizens, for they will find themselves saddled with a Constitution which they might possibly have voted down but for that mistake and this error. It is for this reason that if we attempt to have a separate submission it must prove a fraud and a snare, which no honest man ought to desire to impose on the people of this State. That is the answer, sir.

Mr. WEED—I am again pleased, sir. If I wanted anything more to convince this Convention that there ought to be a separate submission, it must be convinced by the statement of the gentleman from Columbia [Mr. Gould]. The case he puts is put with so much more strength and vigor than I could put it, and must be so conclusive to his own mind and every body else's mind that I thank him for it and take the case as he puts it. Suppose we have a Constitution which is every thing a man can want, and if eighty-one members put a proposition into it that the Baptist Church shall be the reigning religion of this State, the gentleman says that it would be a fraud upon the people of the State to submit that question separately. It would be a fraud upon this people to give them a Constitution that would be the best they could live under in the world—it would be a fraud to give them all their hearts could wish as a people and give it to them separate from this question of religion, or should this religious question be submitted as a separate proposition to the people, that they might, as they would, throw it to the winds and take that which was so good, which was formed with such care and power, to themselves as their Constitution, and throw out that which they did not like. It seems to me that no position could be stronger, in favor of a separate submission than this, and I thank the gentleman for his explanation. He certainly made no such answer when I asked him the question the other day; and I thank him for it now. And I thank him for another remark—a remark that shows the feeling and sentiments of the gentleman and those with whom he acts; and it is when he gave the Irish intonation to the word "nagur." It shows that he in his humanitarian spirit, looks above any man with a white skin; it shows that he believes, from the bottom of his heart, the principle that he tried to inculcate in the Convention, that the negro was infinitely superior to the white man.

Mr. GOULD—The gentleman must not misquote me. I said no such thing as the gentleman says.

Mr. WEED—He said in answer to the gentleman from Kings [Mr. Murphy], that he knew of a black man who he said might not be the equal of the gentleman from Kings [Mr. Murphy], but that he was the equal of every other man in the Convention.

Mr. GOULD—No sir.

Mr. WEED—I do not intentionally intend to misquote the gentleman.

Mr. GOULD—I was speaking then solely on

the question of politeness, and not upon the question of intellect, when I said that, and on good manners. That is all, sir.

Mr. WEED—I cannot distinguish the different positions taken by the gentleman. I know some of his positions had reference to shin bones and others to intellect, for I heard him talking about negroes making almanacs, and asking if any member of this Convention could calculate an almanac, and I had to admit that I could not make an almanac. And I think I heard him talk about politeness, and I think that every one who heard him must be convinced that that black men referred to by him was in his opinion our equal in intellect and much our superior in politeness. I say I am glad that the gentleman gave the intonation that he did, for it accords well with the sentiments expressed by the gentleman from Clinton [Mr. Axtell], my colleague, when he referred, the other day, to the democratic party as composed entirely, or substantially of those who were guilty of the riots in the city of New York.

Mr. AXTELL—I rise to a point of order. Is it in order to make political stump speeches in this session?

The CHAIRMAN—The Chair is of the opinion that the point of order is not well taken.

Mr. WEED—I am sorry, Mr. Chairman, to disturb the gentleman, but when I heard the remarks of the gentleman from Clinton [Mr. Axtell], and heard the eloquent remarks of the gentleman from Onondaga [Mr. Corbett], I thought then, they should have compared notes beforehand. The one threw out the idea before this Convention and the people of the State, that the democratic party consisted of Irishmen, who were ready to go into a riot at any time, and the gentleman from Onondaga [Mr. Corbett], slightly intimated that we were politically, if not in fact, know-nothings. I think they do not agree.

Mr. CORBETT—If the gentleman will allow me to make a correction. I did not intimate it as broadly as the gentleman suggests, but I said there was a strong sprinkling in that direction.

Mr. WEED—There may be a strong sprinkling in some places, but it is not in my direction, and never was. I simply refer to it to show the arguments which are used, and I regretted exceedingly that gentlemen should utter such things upon a question of this kind, that they should so far forget the position they occupy here, as to try, by throwing slurs at the democratic party and members of that party, to carry through what I cannot believe to be right. Those are the arguments and I know they are the only arguments I have heard, in favor of the separate submission, and I refer to it to show that they are not arguments, but appeals to the passions of the members of this Convention. As I said before, the ground has been so fully covered, that no man can make a speech upon this subject connectedly without repeating many things which have been said, so that I shall confine myself to answering peculiar positions taken by gentlemen on the other side against separate submission; and right here in this connection (and I trust it is the last time I will refer to anything said by a member) I wish to take up the election scene so

graphically portrayed by the gentleman from Genesee [Mr. Wakeman] and follow it out a little further. He said, if I remember right, that when that negro who was scarred in his country's cause, presented his credentials at the polls with the broad seal of the United States upon them, showing that he had done service for his country, that he was told by the inspector that the people of the State, had kept the property qualification in the Constitution, and that for that reason he could not exercise the right of suffrage—that he had not the two hundred and fifty dollars. I ask him to go with me to that place where the inspector would tell the negro, "No, you cannot vote." The Convention assembled to reform the Constitution of the State of New York, in which Convention was a member from the county in which that lamented General lived, the death sweat from whose brow you so kindly wiped, determined for some reason I know not what, for some political or party reason, that the question as to whether you should be allowed to vote, should not be submitted to the people of this State by itself, and that that Convention hampered the question of your right to vote with a distasteful judiciary system, or with a distasteful canal system, or with a distasteful finance system, and it all went down together, and for that reason you cannot vote." I tell him that if he desires, or if any other man desires to extend the elective franchise to the negro in this State, they will submit it as a distinct, naked proposition to the people. If they desire to hamper it, if they desire to have it depend on this issue, that issue and the other issue, if my learned friend from Westchester [Mr. Greeley], desires it to depend on the question whether the people of the State will sell their canals, then they will submit it all together.

Mr. GREELEY—I desire to ask the gentleman a question. I wish to know if the gentleman from Clinton [Mr. Weed], did not himself in this Hall, last winter, want to enfranchise the blacks as I proposed to do it, by a simple act of the Legislature.

Mr. WEED—When the gentleman was up last I came very near answering that question myself, but it occurred to me that it was my private action, and not of interest to the Convention, and thought I would not for that reason say anything about it, although I wanted to. I have been waiting for the gentleman from Westchester [Mr. Greeley] or some other gentleman, to ask me this question. I, as a representative upon the floor of the assembly in 1867, was called upon to determine who should cast their votes for the election of members to this Convention. The question came up then, whether negroes should be allowed to vote at that election. I claimed that a member of this Convention was not an officer within the meaning of the present Constitution, and, therefore, there was no prohibition in the Constitution that would prevent a negro's voting for members of the Convention, if the Legislature by statute gave them that right, and that, for that reason, the Legislature had a right to say who should vote at the election of such members. They had a right to say, by statute, who should vote to bring into existence delegates to this Convention, and for that reason, believing then, as I believe now,



that negroes in this State have sufficient capacities and intelligence to vote, I voted that they might vote for the election of members to this Convention. The statute passed by the majority that the gentleman represents upon the floor of this Convention, said that nobody should vote upon the adoption of this Constitution, but persons entitled to vote for members of Assembly, hence I say that unless you violate the law, a man cannot vote upon the adoption of the Constitution that we submit, unless he be a qualified voter of the State, while in my view of the political status of a member of this Convention, negroes were not disqualified under the present Constitution from voting for that office, if the Legislature authorized them so to do; and I may state here that I was sustained, and ably sustained by the Attorney-General of the State of New York, a member of the gentleman's own party, and by a large number in both houses, in that position. That is exactly my position. There I claimed it could have been done according to law. Here it can be done only as the gentleman from Westchester [Mr. Greeley] proposes to do it, in violation of law.

Mr. AXTELL—I would like to ask the gentleman a question, with his permission. Does he regard the democratic party responsible for the riot referred to, and if not, with what pertinency, or with what justice does he charge me with having assumed that they were responsible for the riot?

Mr. WEED—Mr. Chairman, the question of the New York riots is a subject that has been quite fully discussed heretofore. The gentleman has been eloquent about it upon the stump, as others have. I myself do not, and never did hold the democratic party or any other party responsible for those unfortunate occurrences. I have heard it repeatedly attributed to the democratic party. The direct deductions from his remarks and the only application made by the gentleman, was substantially as I have stated. I have given his words. It was to be sure in connection with his idea, that all the gamblers would vote against him when he went to the polls, but nevertheless the direct inference from his remarks was that the democratic party was opposed to negro suffrage, and was composed of that element. I so understand it, and other gentlemen who heard him, so understood him. I am happy to know, as I do to-night, that the gentleman does not claim that the democratic party was responsible for that riot. It is the first time I have ever known a gentleman occupying his position in public, to admit it.

Mr. AXTELL—The gentleman misrepresents me.

The CHAIRMAN—The Chair will inform the gentleman from Clinton [Mr. Axtell], that he is not in order. If the gentleman desires to ask any question he must do so through the Chair.

Mr. WEED—I am willing he should ask me a question. I don't understand that the gentleman from Clinton [Mr. Axtell], proposes to ask a question, but that he is going to make a speech.

The CHAIRMAN—I must enforce the rules of order.

Mr. WEED—Mr. Chairman, I was attempting

to show when I was fired into that there must be some good reason for the responsible majority of this House taking the position that they do, and I will close my remarks upon that subject by repeating that it must be one of the two reasons that I have given. It must be fear or it must be a desire to carry through other measures. I have said in answer to questions that the position of the Democratic party was that the people of the State alone could govern and control this question of franchise. Many of the statements made by gentlemen on this floor have shown that they have mixed the position that I take, that the people of the State alone, have the power and have the right to decide, with the policy that many of them advocate, to wit: that is, that the republican majority in the United States, have the right to force upon the people of the different States just what they please with regard to this question of suffrage. There is where they err. I do not think with them, that the Congress of the United States has the power to force negro suffrage upon the people of the States. I do not think that the slaves of the Southern States are to-day qualified to exercise the right of elective franchise. I do not think it would be just, proper or safe for any party to give them unlimited power to-day, politically, and I take the two positions, that of the gentleman from Genesee [Mr. Wakeman] and that of the gentleman from New York [Mr. Colahan], to prove my position upon this question. I admit with the gentleman from Genesee [Mr. Wakeman], that it was an unfortunate state of affairs, I will say, a disgraceful state of affairs in the Southern States, that prevented the teaching of a black man to read and write. I admit that, with my voice, it never should have existed, but I can see what he fails to see, that whatever the cause, the mind of the great mass of blacks in those States is still ignorant, and until that mind is instructed, whatever may have been the cause of his ignorance, however outrageous it was upon humanity to keep him in ignorance, until he is educated, he is not competent to perform the duties of a citizen. That I believe to be the true position. That I believe to be the position of the Democratic party. I have no right to speak for that party. I simply speak for myself. I would say of that party, however, as it has been attacked by the gentleman from Wyoming [Mr. Merrill], that it may be led to-day by Bourbons, it may have been led for years by Bourbons, but he must remember that it was the red republicans, the Robespierres, the bloody rebels of France that overthrew the Bourbons, and that they deluged the country in blood when they did it, and that they left the people a worse government than the one they dethroned, yet they cried liberty, and humanity, and they kept step to the music of progress, as they thought, they lived for the future, they disregarded the past. It is because I cannot follow in the theories of my friend from Onondaga [Mr. Corbett], and keep step to his idea of "the music of the union," because I can't throw entirely behind me the past, and only look to the future, without any guidance from the experience of the past, that I am said to belong to a party led by "Bourbons." I am in favor of progress, not that progress that



upstart a nation: that, disregarding the past entirely, is led by reckless enthusiasts, who, to gratify a favorite idea, would lead our land to ruin; but that progress, that seeks from the errors of the past to guide the bark of State safely in the future, that progress that careful thinking men approve, and that works out its benefits to mankind silently, but surely. *I am not in favor of revolutionary progress.* I know that some suppose the gentleman from Wyoming [Mr. Merrill], to have referred to another class of Bourbons. [Laughter.] I didn't so understand him. If he did I should have thought that he would have hardly called his own leader to account for leading the Democracy. I do not see any difference in that view, between Bourbon and Rye [laughter], for they are the same kind of leaders, and equally divided politically. But Mr. Chairman, as I have said before, these questions have nothing to do with the real issue: the question is one of how we shall submit this proposition, whether it is best that it should be submitted as a separate and independent proposition, or as a proposition in with the body of the instrument. I wish to call the attention of this committee to one other thing. Suppose we have but three or four amendments to propose to this Constitution in the end, shall we propose an entire new Constitution, or submit them separately. It would be the proper way, as it seems to me, with all these questions before us; and the only way to submit this question to the people, if we believe in it, is to submit it as an independent proposition. I wish to say one word upon the other amendments for the proposed extension, in regard to the registry law. The gentleman from Westchester [Mr. Greeley], and other gentleman have advocated that strenuously.

The CHAIRMAN—The Chair will inform the gentleman from Clinton, [Mr. Weed] that that subject is not now before the attention of the Committee.

Mr. WEED—I supposed that the two questions before the Committee were the questions presented by this amendment, of the gentleman from Cayuga [Mr. C. C. Dwight], which is proposed to be amended by the gentleman from Kings [Mr. Murphy].

The CHAIRMAN—The gentleman from Clinton [Mr. Weed] is entirely correct.

Mr. WEED—The question of Mr. C. C. Dwight's amendment involves the very question I refer to. It proposes to leave out as I understand it, the thirty-day clause. If I am mistaken about that the Chair will correct me.

The CHAIRMAN—The Chair will inform the gentleman from Clinton [Mr. Weed] that he is right; therefore it seems to me that it is properly under consideration. The Chair understood the gentleman from Clinton [Mr. Weed] as referring to the latter part of the report of the committee in regard to the registry law.

Mr. WEED—It was probably a mistake of my own. I said registry, when I meant to say "residence." It seems to me there is no necessity for that change, as has been ably argued by others here. I can add nothing to their arguments. We should make no change in the Constitution

that has served us so well for twenty years, unless it is necessary, and I know of no complaint upon this subject. I agree fully with those who would strike out that portion of this report disfranchising paupers, for I look upon that as covering, as the gentleman from Broome [Mr. Hand] has said, all those who have received temporary relief under the statute, within thirty days from an election; and we know that many old and enfeebled persons have to be relieved in that way under our existing statute. It is one of the best features of our State government that we have the power, and that we have officers whose duty it is to relieve the wants of such people, without compelling them to go to public poor-houses, and such people would be denied the right of voters, if the amendment proposed by the report of the committee, is adopted. Can it be that it is progress, to disfranchise the unfortunate—I trust it may never be done. In conclusion, it seems to me that the views of the minority report are right. This matter should be separately submitted.

Mr. MASTEN—I do not rise for the purpose of making any extended remarks on the question before the committee—still I desire to submit some observations. I have neither the information nor the resolution to enter upon all the subjects which have been explored by gentlemen during this debate. I shall make no attempt to photograph the colored man in his person, nor give the measurement of his moral, intellectual or social powers. Neither shall I attempt to draw any comparison between the white man with a brain, the result of centuries of culture, and the colored man in his present condition. I doubt not he is capable of culture. Nor shall I attempt on this occasion to discuss the merits of colored suffrage, because, Mr. Chairman, I do not believe that my duty in this body calls upon me to do so. I shall endeavor to confine myself to two points—to express my opposition to the principle embodied in the first branch of the amendment of the gentleman from Kings [Mr. Murphy], and to maintain that this question of colored suffrage should be separately submitted to the people for their consideration and determination. I am opposed, sir, to the principle by which the possession of property is made the test to vote. I have always supposed that the party with whom I have acted from my youth upward was opposed upon principle to the property test, and I regretted at the time, and I still regret, sir, that the gentleman's amendment sustained the first branch or clause, because, being an amendment to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight], it is in effect a proposition to make in a certain case the possession of property a test to the right to vote. The gentleman, at the time that he introduced his amendment, stated that he himself was opposed to the property test, and I was at a loss to see how the gentleman was going to vote for that amendment until he subsequently explained. He said that he found the provision in the present Constitution, and he was willing to leave it there. Sir, if there be no other reason why the colored man should not be clothed with the elective franchise than that he has not a certain amount of property, then he should be clothed with it. If the only reason in favor of confer-

ring upon the colored man the right to vote, is, that he has that amount of property, then he should not be invested with this manly privilege. I suppose, sir, that possibly another consideration may have operated upon the mind of the gentleman [Mr. Murphy], which he has not stated to us here. If the question was submitted to the people, whether or not the colored man should vote, and the result should be, perchance, against him, that he should not vote, then certain persons who now have the right to vote would be disfranchised, and it is possible that that may have influenced the gentleman in introducing this amendment. I would prefer that some other provision should be made than the property test in that case. I should prefer that some provisions should be made in the event of the vote being adverse to colored suffrage, that the colored men who now have the right to vote, should continue to have the right to vote during their natural lives, whether they continue to be possessed of property or not. I am, sir, in favor of a separate submission of the question of colored suffrage. So much has already been said on that subject, and ably said by gentlemen, that I shall content myself with simply stating certain propositions without much argument or demonstration, indeed without any. I am in favor of submitting every distinct subject in respect to which there is any doubt as to the will of the people, and which if adopted or rejected would not render the instrument we shall prepare incongruous or defective. I am in favor of submitting this question separately, because we are acting here in a representative capacity, and it is our duty as I understand it, to express the will of the people, and not only that, but so to prepare and present our work, that those whose agents we are may adopt what they approve and reject what they disapprove. This question must be submitted to the people. I don't know that there is any desire not to give them a full opportunity to pass upon it. The people must pass upon it, and the question is, or should be, Mr. Chairman, how can it be submitted to the people so as to give them the best opportunity to examine it and to pronounce upon it an intelligent and sober judgment. Is there not doubt as to what the will or judgment of the people is on this subject to-day? How can the will of the people be so well ascertained as by a separate submission? What other way is so direct, so simple, so honest and so fair to the people? This question has been submitted to the people upon former occasions and passed upon by them, and if the expressions they then gave are any criterion by which to form our judgment now, it would be that the people are adverse to free colored suffrage, and that any Constitution which should contain a provision in favor of it would be rejected. But, sir, I am of the opinion that those expressions are not a certain criterion by which to judge of their present opinion or their present judgment upon the question. Great changes have taken place since these votes. The status of the colored man has changed, and the condition of things affecting this question also has changed. At that time there were millions of colored men in slavery, and but few free. The

relations and obligations of the States to each other under the Constitution were such that the policy of making colored men part of the governing classes in this State was of exceedingly doubtful policy. Some changes have taken place. The gentleman from Oneida [Mr. T. W. Dwight], told us that he voted against free suffrage on the former occasions, and has been converted. He told us of his conversion. I hope other changes have taken place. I certainly hope so, and I wish I could gather more encouragement than I am able to from the change of the gentleman from Oneida [Mr. T. W. Dwight]. If he had told me that he had solved the matter out upon statesman-like principles, and had arrived in that way at the conclusions he has come to, then I should have hoped for more from it. For that is the way in which the people will examine this question; they are going to reason about it and determine upon statesman-like principles. But from the manner in which the gentleman was converted, knowing as I do that he is a gentleman of a logical mind and of fine acquirements, I cannot but regard his conversion as miraculous. There is another reason, sir, why I am in favor of submitting this proposition separately, and that is the importance of this question. The right to vote, although conventional, is a precious one. It is one of the highest rights possessed by the citizen. To be an elector is to be a member of the governing class, a component part of the sovereignty. I desire that my constituents, the people of this State, should have the opportunity of examining that question by itself. I do not desire, and, sir, I am not willing in order that my individual wish may prevail, to boost up this question, by connecting it with others, to the embarrassment of the people; nor am I willing that it should be voted down by being connected with questions which may prejudice it. I am unwilling to compel the people, in order to get what they want, to take what they do not want. I am unwilling to compel them to reject what they want, because it is mixed up with things which they find too unpalatable to take, or which they believe to be detrimental to their interests. There is still another reason why I think this question should be separately submitted. We are here at no little inconvenience to ourselves, and at some expense to the State. We shall doubtless present some very desirable changes in the organic law—changes desired on all hands by the people, as well as the members of this Convention—and I am unwilling that they should be rejected and our labor should go for naught, by being connected with any question in respect to which the will of the people is doubtful. Sir, there are several other reasons which I might state here in this connection, but which have been alluded to, and I shall not therefore detain the committee, because I see the committee is impatient to rise. At least one gentleman who has spoken some four or five times on this question, desires to cut off debate to those who have not spoken or had an opportunity to. It is quite natural now to ask why not submit this distinct proposition separately? No proposition can be placed so distinct from every-

thing else. Its adoption or rejection will not affect or disturb any of the other parts of the instrument we will prepare. Why not submit it? The gentleman from Westchester [Mr. Greeley] says it will produce confusion. I am certain, whatever confusion it may produce in his mind or in his action, the people will have no trouble of that description about it. I believe the people have greater capabilities than he seems to think they possess. Another gentleman said it would be cowardice to submit it separately. That has been so fully and conclusively answered by the gentleman from Essex [Mr. Hale], that I will say nothing on the subject. There was another gentleman, the gentleman from Clinton [Mr. Axtell], who said this question should not be submitted separately, because (I do not exactly remember his language) it might possibly be defeated because gamblers and other evil-disposed persons would vote against it. Now, that same gentleman during the debate to-day has spoken of stump speeches. Whether this was a stump speech or not, I do not know. But let us look at this reason and follow it out. I am opposed to submitting this proposition to the people separately, because it may possibly be defeated. The gamblers and evil-disposed persons will vote against it. Now, what is the plain English of that, Mr. Chairman? Is it not that the people are not to be trusted, or else they are not competent to pass upon this question. I hardly think the gentleman would be willing to say that, or that that was what he meant, but still is not that the argument when reduced to plain English? Something has been said also in respect to party. Now, sir, when I came to this Convention I hoped that we would not hear the subject of party mentioned in it. I hoped that we would come here and discharge our duties to the people and not to party only, and prepare a Constitution for submission to the people embodying the true principles of government. But it is said this is a party question. If by a party question it is meant that the democrats in a body are going to vote against colored suffrage, and that the republicans in a body are going to vote for it, both parties will find themselves egregiously mistaken. It will be found that many democrats will vote in favor of it, and I fear sir, it will be found that a great many Republicans will vote against it. One word more. I would like to have this question submitted to the people in this form: shall the colored man vote under such circumstances as the white can, or shall he not vote? That presents a broad question upon principle.

To guard against disfranchising those colored men who can now vote under the property test, in case the people should vote against colored suffrage, I would insert a provision that those who now possess it, should continue to possess it during their natural lives and I would not even as to them require the property qualification. I have an amendment which I shall offer on the first opportunity,

Mr. PAIGE—I rise sir, to explain my views on the subject involved in this amendment. One word in respect to this property qualification. This property qualification of a freehold of two

hundred and fifty dollars as the condition of extending the right of suffrage to a portion of the men of color, is by no means an essential part of this amendment. That simply, as I understand it, is embraced for the benefit of the men of color having property to the value of two hundred and fifty dollars. For one, sir, I am perfectly content to strike the property qualification out and present the question fairly to the people, whether they will extend unqualified suffrage to men of color or not. In the Convention of 1846, Mr. Charles P. Kirkland, who was in favor of negro suffrage, introduced as an amendment this identical clause now contained in the Constitution of 1846, copied from the Constitution of 1822. He found, sir, from the opinion of the Convention, that they were in favor of retaining that clause, and that nothing more could be obtained. So, sir, he introduced it; and the amendment upon the division called was adopted by the Convention by a vote of some 63 to 32. In addition to the authority of Mr. Kirkland, no man having a higher reputation than he, his proposition was sustained by one of the ablest members of that Convention, Mr. Nicholas. He also, sir, was in favor of extending unqualified suffrage to the negro race. He was also in favor of submitting the question as a separate proposition to the people, and he sustained this property qualification in the interest of the men of color. For he said, if the vote of the people is adverse to the extension of unqualified suffrage to men of color, and this property qualification is not retained, they will get nothing. But if the vote is adverse to the men of color on the question of unqualified suffrage, this will be left to them. He also explains, sir, how this property qualification came to be inserted in the Constitution of 1822. He stated that he believed that the members of the Convention who adopted that Constitution had come to the conclusion that the man of color had not sufficient intelligence to exercise the right of suffrage; and that therefore, they proposed this qualification not as an element essential in and of itself, or as a condition of the right of suffrage, but as the evidence of sufficient intelligence of men of color to entitle them to exercise this right. He further remarks, that if that was all they could get, it would operate as an incentive and they would be stimulated to acquire a freehold, and thus become both men of property and voters. Now, sir, that provision in this amendment is entirely unessential to the presentation to the people for adoption or rejection of the unqualified right of suffrage, and if any gentleman prefers to strike it out and will submit by itself the simple proposition of unqualified suffrage or not to the people I am content. Now, sir, a few words, in relation to this question of suffrage to the colored race. I shall not go into the question whether the colored race are inferior or equal to the white race. I shall not go into the question whether they are sufficiently intelligent or not to exercise the right of suffrage. But what I contend for is substantially the proposition of the gentleman from Essex [Mr. Hale], that the ruling and governing power of this State is vested and deposited in the hands of the qualified voters



of this State, and that before that power, the exclusive right of suffrage, can be curtailed by admitting to its exercise other participators, the question must be submitted to such qualified voters. It is essential upon principles and essential upon the principles of our government that the qualified voters shall be consulted whether they will consent to surrender a portion of their political power by extending suffrage to men of color. Now, sir, in that respect it becomes quite important to ascertain upon what principles the right of suffrage is claimed for men of color. Some gentlemen have urged that the right is a natural right, a natural right to participate in the administration of the government. Some have contended that the man of color was created equal with the white man; and some have contended that because slavery is now abolished, the free colored men should be admitted to the right of suffrage. The gentleman from Oneida [Mr. T. W. Dwight] presented another theory, that there were five pre-requisites to entitle a man to exercise the right to vote—intelligence, integrity, independence, interest and incorporation. In examining these different grounds upon which the right of the colored man to vote is to depend, another question presents itself. If it is a natural right, a right inherent in man by birth, then all persons belonging to the human family, both male and female, have this inherent right by their birth, the gift of the Deity, the right to vote. The gentleman from Fulton [Mr. Smith] I believe did not rely upon this natural right. But he relied upon that clause in the Declaration of Independence which declares that all men are created equal; and he argued if the colored man is equal to the white man, and the white man is entitled to the right of elective franchise, so also is the colored man. Now, sir, the phrase, that all men are created equal, embraces the whole human family. It is not confined to males but it also includes females. When the word *men* or *mankind* is used as a generic term, it embraces all mankind, men and women. Under the doctrine of natural right to vote, and under the doctrine that all men are created equal, if the colored man has a right to vote, so has the woman. Under the theory of the gentleman from Oneida [Mr. T. W. Dwight] woman is also comprehended, for woman certainly is as intelligent, and as honest, and as independent, as the man of color, and she also has the two other pre-requisites of the gentleman; and if men of color under these five pre-requisites are entitled to vote so is woman. But the learned gentleman from Oneida [Mr. T. W. Dwight] on the question put to him said he excluded woman because she would or might arrest the progress of society, prevent its development and subvert it. The proposition, Mr. Chairman, strikes me, with due deference to the gentleman from Oneida, as preposterous. To say that woman, the humanizer of man; woman, that gives man all the polish and refinement that he possesses; that she would arrest the progress of society! Why, I must be permitted to use the term, it is preposterous. Now, sir, upon every one of these theories, natural right; that all men are created equal; and

the five pre-requisites of the gentleman from Oneida, woman is embraced as well as man. If we stand upon either of these three bases, if we give the right of suffrage to the colored man, then we must give it to the woman. But, sir, my theory is a different one. There is a manifest distinction, upon the principles of the science of government, between natural rights, civil rights, and political rights. Natural rights are inherent in the man or woman by their birth. They are the gift of the Deity. Civil rights are the natural rights of a man when he enters into a political organized society, so far restricted as shall promote the general welfare of the public. They are natural rights transmuted into civil rights. To these you may add the other civil rights included in the Bill of Rights, passed by Congress—a right to sue, a right to be parties and the right to make contracts and to purchase and hold property. These are in addition to the rights given by nature, which are life, liberty and a right to hold private property and the pursuit of happiness. And what are political rights? In other terms, political liberty—political liberty is the security which the Constitution of the civil government gives to the citizen for the protection of his civil rights. Political liberty, therefore, is the constitutional security that the citizen has to protect him in the enjoyment of his civil rights. You may say that qualified voters have political rights, as a right acquired under the Constitution to exercise the right of the elective franchise. But what else, sir? In addition to political rights, there are political privileges, political franchises; the right of suffrage is a political franchise. When the question arises, shall the right of suffrage be extended to another class of persons, or to any other particular persons than the existing voters, it is a question of the gift of a political franchise. A franchise, sir, now exclusively in the hands of the present qualified voters, the ruling and governing power. Now, sir, how do these voters get this political power? I will refer you to the model Constitution of Massachusetts, adopted in 1780. It was prepared by John Adams. He had prepared it as a model Constitution for all the Colonies. It was adopted by the Colony of Massachusetts. When the citizens of Massachusetts seceded from Great Britain and adopted a Constitution of their own, they were in a state of transitu. And when they agreed to adopt that Constitution, that Constitution was a social compact; and a social compact, political writers declare, is the foundation of all governments. In some instances it is an express contract; in some it is implied. Now, sir, in that Constitution, the qualification of electors was defined and prescribed; and in that Constitution all the people of the Massachusetts Colony acquiesced. If it was not by a direct acquiescence in the choice of delegates, it was by a silent acquiescence. Therefore, that Constitution conferred upon the first voters the ruling and governing power, and there it has remained ever since. How was it here in 1777? The people of the Colony of New York voted for delegates to a Convention, authorizing them to ordain and establish a Constitution. They did so, and in that Constitution they declared who should



be the electors of the State of New York, and prescribed their qualifications, and when that Constitution was completed and accepted, such electors became the holders and possessors of the political power of the State, and there it has continued ever since. When the Constitution of 1822 was adopted, it also prescribed who should be the electors. So in the Constitution of 1846; and therefore, the political power and the ruling power of the State is now in the qualified voters of the State. Now sir, these qualified voters have a right, having in their hands this franchise, the right of suffrage, to give it to other classes. If they choose to give it to men of color, they have a right to do so. It is a surrender in part of their exclusive governing power. If they choose to diminish the aggregate of that power by taking in other persons as participators, they have a right to do so, and if they think proper also to include and embrace women, or any part of them, they have the right to do that. Then, sir, we see the importance, we see the necessity, we see the absolute necessity, that the question of extension of unqualified suffrage to men of color, now before this Convention, should go down to the depositaries of political power for their action thereon. We are simply appointed and authorized to prepare a Constitution and present it to the qualified voters for their adoption or for their rejection. Its submission to them is essential. It is indispensable that it should go to the voters, as a separate and distinct proposition, as it involves the surrender of a portion of their political power. It strikes me, sir, from this cursory review from the beginning of natural rights, civil rights, and political rights and of the various theories of the right of suffrage, that the theory I have presented is the only true one that the principles of government and the science of government and sound sense and sound reasoning will justify. Gentlemen here have said it is an insult to the people to submit this question to them. Is it an insult to submit a question to the qualified voters whether they will surrender in part their political power by taking in associates, thereby diminishing the individual power of each one? Besides, sir, there is no other possible way to have the revised Constitution become an operative one, or to make the extension of the elective franchise, if granted, available to the men of color, except by sending the Constitution to the qualified voters for their ratification. Why should it not be sent down? It is believed that many of the individual electors are opposed to extending the right of suffrage. If the extension of this right to men of color is submitted to the voters in connection with the other provisions of the Constitution, they must either vote against provisions which they approve in order to defeat the obnoxious provision they disapprove, or they must vote for the obnoxious provision in order to carry the provisions which they approve. The very proposition seems to me, presents upon its face a conclusive argument why this should go to the electors in a separate form. We see at once that we impose upon the elector moral coercion; we compel him to vote against a proposition which he approves, or compel him to accept a proposition which he disapproves. Now, sir, I will refer the Convention to the Bill of Rights

contained in the Revised Statutes which provides that all elections ought to be free. It also prohibits all devices by way of hindering or interrupting or interfering with the free exercise of the right of suffrage. Under the conjoint proposition, the election upon the subject of the extension of the right of suffrage to men of color will not be free. Physical coercion is no worse than moral coercion. Why, sir, in a court of law, the court is frequently called upon to set aside a moneyed security on the ground that it is obtained under duress. A man in imprisonment gives a bond for the purpose of acquiring his liberty; the moment he is free he goes into a court of justice and the bond is set aside, because obtained under duress. You deprive an elector opposed to any provision of the Constitution and in favor of another, by putting them together, of the freedom of election. You impose upon him moral coercion; it is no longer a free election: it is a tyrannous exercise of political power which the free institutions of our country will not tolerate, and it will be offensive to the friends of regulated liberty. Now, it seems to me that we ought not to have any difference of opinion on the subject of a separate submission. We ought to wish to have a free and unbiased vote from the qualified voters upon the propositions of this Constitution. In all probability all the other material provisions of the Constitution containing the frame of the government; the executive department, the legislative department and the judiciary, will give rise to so little difference of opinion between the delegates here that it can be reconciled. And there will be so little difference of opinion among the people, that you may submit the frame of the government so called in one proposition, and then you can leave this other proposition to be submitted separately. As to this proposition we know there is a difference of opinion; we know it has been controverted for years; it has been voted down twice. Some gentlemen say they presume now that the qualified voters have changed their opinion on this subject. They have no right to take that for granted. We should submit this question to them and let them speak for themselves. We have no right to speak for the people of this State, and say that they are not opposed to negro suffrage, they having so recently voted against it. Besides we would be unfaithful to our duty here as representatives of our constituents, sent here to prepare a Constitution if we do not submit it to them in a form to enable them to express an opinion upon this controverted question. We cannot ordain a Constitution. We must prepare it and submit it to them, and we must submit it to them in a form upon which they can exercise the freedom of election. What do we do if we do not submit the question of negro suffrage to the voters as a separate proposition? Why, sir, we violate the most solemn obligation imposed upon us as their representatives by compelling them to vote against propositions which they approve and in favor of propositions which they disapprove. I refer this committee to the section of the Bill of Rights which prohibits every person, by menace or otherwise, from hindering the free exercise of the right of suffrage. A conjoint submission will be a hindering of the exercise

of the free right of suffrage. It will violate this provision of the Bill of Rights, in its spirit and not its letter. What further do we do? Why, sir, we assume the moral responsibility of defeating this Constitution. In all probability this proposition of negro suffrage may be carried. But in case it shall not be carried in the form of a conjoint proposition, and the whole instrument shall be thereby defeated, in consequence of this joint submission, what a fearful moral responsibility will this Convention have assumed! Why, sir, it is a responsibility that I for one am not willing to assume; and we have no right to say that the Constitution will not be defeated. We, in the first place, are not only bound to submit this proposition separately in order to give our principals the right of free choice, but we are bound also to avoid that possible calamity of a defeat of the whole, by putting the propositions into one instrument. It seems to me, therefore, sir, that this is the only way in which our duty can be discharged to our constituents, and have this subject settled, as it ought to be, satisfactorily to us and them. Now, sir, if we adopt this course, there will be no material differences of opinion here, at least none which cannot be reconciled, and we shall go on with all the other provisions of this contemplated Constitution, and complete them. A question has arisen here—suggested by the gentleman from Westchester [Mr. Greeley] that in case we include in this Constitution men of color or women, or both, they will have the right to vote upon the question of the ratification of the Constitution. Not only that suggestion is against the express terms of the Convention act, but it is against all the principles of the theory of our government which I have endeavored to present to this Convention. The idea is of itself preposterous and cannot be entertained for a moment.

Mr. COOKE—It has been suggested, sir, by gentlemen on both sides of the house, that this question of negro suffrage has divided the political parties of the country, and although it is to be regretted that any political or party division should prevail in this body, perhaps it is wisdom to accept the situation as we find it, and see whether the question derives any new aspect from that fact. The gentleman who proposed the amendment calling for a property qualification for the colored voter, justifies it on the ground, that he is opposed absolutely to negro suffrage under any circumstances, while the gentleman from Clinton [Mr. Weed] defends the resolution, or something equivalent to it, on the ground that he favors negro suffrage unrestricted. I do not allude to this circumstance for the purpose of indulging any doubt as to the sincerity of either profession, but as showing simply how intelligent men will differ in the adaptation of means to ends.

Mr. HALE—I would like to ask the gentleman a question, inasmuch as the gentleman from Clinton [Mr. Weed] is absent. I would ask the gentleman whether he does not understand that the gentleman from Clinton [Mr. Weed] distinctly said that he was opposed to the amendment of the gentleman from Kings [Mr. Murphy].

Mr. COOKE—I understand the gentleman from

Clinton to say to-day, that he is opposed to this particular proposition, and he expressed the disposition, whenever it was in order, to submit a substitute for it, but on this subject of negro suffrage I understand him to contend for the principle of the separate submission of this question to the people, differing only in form from the pending amendment, claiming and urging to-day as he did the other day, that he was decidedly in favor of negro suffrage without any property qualification. For the purpose of reaching the point at which I am aiming, I shall assume that the gentleman from Kings [Mr. Murphy], who proposed this amendment, represents more nearly the attitude heretofore held by the party calling itself the minority of this Convention, than the gentleman from Clinton, and the doctrines of that party as represented by the gentleman from Kings, as he has substantially stated it before the committee, is that the right to participate in the administration of government, is a franchise or privilege, and is conferred solely with reference to expediency and good government, and that the class of persons in question have no such qualifications as to render their participation desirable on the ground of expediency. The other party being in the majority in the Convention held, down to the time of assembling of this Convention, that to participate in the administration of the government, was an inherent right of citizenship, and could not be denied to any citizen, which is placing the right of suffrage on higher ground than mere expediency, and as we believe, beyond the reach of the argument of our opponents. If we degrade this right of suffrage into a mere privilege depending on expediency, we have presented for our consideration a question vastly different from that where we assert this to be an inherent right of citizenship, and that citizenship *per se* gives the right of the ballot. If we are only to determine whether our laws will be improved and our government made essentially better by calling to our assistance the class of persons affected by this amendment, who on this floor will undertake to demonstrate the justness of that proposition? If that be the question, in determining whether the elective franchise, as it is called, shall be extended or restricted, I tell you, sir, a proposition for depriving and excluding many of the class of citizens who now enjoy this franchise, will find many an advocate here and elsewhere throughout the country. Such was the position of parties in reference to this question until in an evil hour the gentleman from Richmond [Mr. Curtis] unmasked his battery and threatened the Convention with the nameless horrors of female suffrage, whereupon gentlemen, earnest advocates of manhood suffrage, stampeded from the ground on which alone the position was clearly defensible, and took refuge in the camp of the gentleman from Kings. The gentleman from Dutchess [Mr. Carpenter] declared that it was a fallacy to speak of the franchise as being a right, that it was a mere privilege. The gentleman from Fulton [Mr. Smith] declared that he fully agreed with the gentleman from Kings in his premises, but differed from him in his conclusions, claiming that it was perfectly expedient, as he thought, for the negroes to vote and the gentleman from Broome [Mr. Hand]

said that the gentleman from Fulton had spoken well on that subject and he fully accorded with his views, thus leaving my venerable friend from Rensselaer [Mr. M. I. Townsend]—as I believe he consents to this designation—alone in his glory. I propose now, Mr. Chairman, without taking any precautions at this stage of the question, against the danger that gentlemen see lowering over yonder portion of this chamber, to predicate the action I shall take upon this question, upon the ground that suffrage is an inherent right of the citizen, and to put in a plea of misnomer to this whole matter of elective franchise as applied to a citizen of this commonwealth. I presume it will be pretty generally conceded that our government is based upon the idea that all sovereignty is inherent in the people. It is so declared in terms in every Constitution in the Union except three or four, and in those it is clearly implied. In Alabama, Florida and Kentucky, it is stated in this language: "That all political power is inherent in the people, and all free governments are founded upon their authority, and instituted for their benefit, and that, therefore, they have at all times an inalienable and indefeasible right to alter, reform or abolish their form of government in such manner as they may deem expedient." In Arkansas it is stated as follows: "That all power is inherent in the people," and, otherwise, it proceeds in the same language. In Kentucky it is stated as follows:

"That all power is inherent in the people, and all free governments are founded upon their authority, and instituted for their peace, safety, happiness, security and the protection of property. For the advancement of these ends, they have at all times an inalienable and indefeasible right to alter, reform, or abolish their government, in such manner as they may think proper."

I will not stop here to inquire how the people are to exercise the indefeasible, inalienable right to alter or reform their government, unless they have the indefeasible and inalienable right to bring themselves in contact with the government, and to participate in some way in its administration.

Mr. FOLGER — Will the gentleman from Ulster [Mr. Cooke] allow me to ask him one question? I would like to ask him if the people are all of one sex?

Mr. COOKE — I understand it not to be so. Perhaps my friend has different views from myself on that subject.

Mr. FOLGER — Then, if it is an inherent right in the people to take part in the government, how do we shut out the female sex?

Mr. COOKE — I take great pleasure in stating to my friend that if I succeed in expressing my views in regard to this question, he will find his question fully answered. The gentleman from Schenectady [Mr. Paige] seems to think that this power, particularly this political power that these provisions in the several Constitutions say should inhere in the people, reside in that portion of the people only who find themselves qualified voters under the law, and that their power, I suppose, is sovereign; there is nothing beyond or behind it, but that all power is derived from them. In this connection, I

desire to call the attention of the committee to the language of Chief Justice Taney in the celebrated Dred Scott case, to show what is meant by the term "people?" Who are the people in whom sovereignty resides.

"The words people," he says, "and citizens are synonymous terms, and mean the same thing. They both describe the political body, who, according to our Republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the sovereign people, and every citizen is one of this people, and a constituent member of this sovereignty."

The gentleman from Fulton [Mr. Smith] supposes that there is another organized existence called "society," that somehow interposes between the citizen and the government, and in which body sovereignty resides, and between his argument and that of the gentleman from Broome [Mr. Hand], I believe it is made out that this society uses government for the purpose of divesting or destroying the natural rights of the people, uses it as a sort of weapon with which to maul the people out of their rights. Society organized, with the government in its hands, the object of which is to destroy the natural rights of a citizen—

Mr. SMITH — Will the gentleman allow me to put him a question? I should like to know whether he is now professing to state my position, or whether he is merely giving his own inference from the result of my argument.

Mr. COOKE — I was endeavoring to get at the system that the gentleman was laying down, and explaining before the committee.

Mr. SMITH — If he is stating his inference, as the result of my argument, I have nothing to say about it; but if he is attempting to represent my position I must beg leave to correct the gentleman, for he misrepresents it.

Mr. COOKE — The gentleman from Fulton [Mr. Smith] will understand I am not pretending to give his language but I am grouping his argument with that of the gentleman from Broome [Mr. Hand], trying to state the result as I understand it of the two arguments combined. I believe the gentleman from Fulton [Mr. Smith] was very explicit in stating that society made use of government, or that government was the agent of society, and the gentleman from Broome [Mr. Hand] followed on with this old notion about government gathering from the people, or the people when entering into the political compact surrendering their rights, and I believe in the little skirmish they had with the gentleman from Rensselaer [Mr. M. I. Townsend] they pretty much agreed among themselves that the people could divest themselves of any right.

Mr. SMITH — If the gentleman will allow me for a single moment, I am very sorry to interrupt gentlemen in their arguments, but as the gentleman seems to have misunderstood the position I took, I beg to state it in a single word. My theory and position is this, that society is an institution of God, a divine institution; that government is a necessity of it, and pre-supposes the existence of society, and that society uses government as a power or instrument by which to regu-



late the civil conduct of its members, and secure their rights and their liberty; that government is an agent of society, not for the purpose of destroying the rights of man, but for protecting those rights, and securing the highest interests of man in his capacity as a social being, and a subject of God's moral government.

Mr. COOKE—And yet, somehow or other, through the instrumentality of government or the society of which the citizen becomes a member, I certainly understood the gentleman to conclude that he became divested of certain rights, that naturally and independent of government, appertained to him. But the language I have read from these Constitutions is that citizens or members of the State are the sovereign people, and I submit, if language can be made to mean anything, the Constitutions from which I have read excluded the idea of interposing any power between the citizen and the people or the government. Government, practically and theoretically, is nothing more nor less than society organized, and when, in the organization of society into government, it is provided that sovereignty shall inhere in the people, it will not do to say that the effect of the instrument is to take it from the people and deposit it elsewhere. What ground is there for saying that by entering into the civil compact the people divest themselves of their natural rights? I instance the right to the pursuit of happiness which includes the right to regulate one's own conduct, in other words, the right of self-government. I maintain that the object of government is to protect and regulate these rights and not to destroy or divest them. And if there is any government that tends in the direction of the destruction of these rights, rather than their protection and regulation, and to secure the people in the enjoyment of them, that government is not the government that is bargained for by these Constitutions. The Declaration of Independence has it, that to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed. Blackstone, from whom a great deal of the doctrine of the gentleman from Fulton [Mr. Smith], as well as the gentleman from Schenectady [Mr. Paige], is drawn, expresses it in this way: [1 Blackstone 124] "The principle aim of society is to protect individuals in the enjoyment of those absolute rights which were vested in them by the immutable laws of nature. It follows that the first and primary end of human laws is to maintain and regulate those absolute rights of individuals."

The government, by consent of the governed, in carrying out its object of protecting and regulating the natural rights of man, makes provision for a substitution or delegation of certain powers of the citizen, and suppose government, for convenience or other prudential reasons, should recall from one portion of the citizens and delegate to another, by the consent of the governed, the right, practically and for the time being, to participate in the administration of the government. This right, by that act, is merely substituted, and the body, or the class of persons who are allowed to exercise the right for the purposes of government, hold their power only by substitution and delegation from all the citizens in whom sovereign power is

vested. Ultimate sovereignty remains in the people. The Constitution of Massachusetts adopted in 1780, Article 5, has this provision.

"All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive or judicial, are the substitutes and agents and are at all times accountable to them."

I think it follows that notwithstanding authority is conferred on the agents of government over many of the rights of citizens, in many cases to their entire suspension, yet ultimate sovereignty remains inalienably in the citizens. Franchise is defined to be a privilege granted to a person or a number of persons by the sovereign. My objections to calling the right of suffrage or the right of a citizen to participate in the administration of government are, First, that the recipients of this privilege are the sovereigns. Sovereignty is in the citizens. It is in the people, which Judge Taney says means the citizens. Not that class of citizens who, by some statute, are allowed the right of suffrage, but all the citizens who would have the right in case of a dissolution of the government to form a new one. Second, the government agencies who, as is said, confer this privilege, are not the sovereign power. Any concession by society or by the government, in regard to any right over which it has any delegated power, is a mere surrender of the business of its trust or agency to the principal, and is no more a grant of privileges or powers than is the cancellation of a power of attorney between man and man. The ballot is the form prescribed by government for the exercise of sovereign power, which inheres in the citizen—the power or right the people already have, and the grant is of the form and not of the substance. True, this particular manner in which the sovereign power shall be expressed, is regulated by government, and so far as respects the form, it is political, but it is not accurate to say, it is a mere political right. Suffrage, or such equivalent as shall be provided by law, is designed to protect, and affects no less a right in the people than life, liberty and the pursuit of happiness, which are both natural and inalienable rights. I therefore claim that the gentleman from Rensselaer [Mr. M. I. Townsend] was not so wide of the mark, in speaking of the right of suffrage as a natural and inalienable right, as those gentlemen by whom he was so roughly criticised were in pronouncing it a mere political right. These natural rights that inhere in the people, when they are committed to the hands of government to be regulated, protected and secured, are not surrendered or abandoned; and when the right of man to regulate his own conduct, the right of citizens to govern themselves, is acknowledged to be a natural right, and, when they come to enter into society, a government is called upon to regulate the exercise of those rights, when they say that the manner in which those rights shall be exercised is through the ballot, they are not granting the right to participate in government. They are only affording a means by which they can exercise a right that resided in them before. What ground is there for



saying that this proposition must necessarily be submitted to the people separately? The Constitution under which we are now living allows two modes of amending and revising the Constitution. It provides in the first place that the Legislature may pass an act submitting any proposed amendment to the people, and on its passing two successive Legislatures, if approved by the people, on a submission to them, the amendment shall be adopted, and form part of the Constitution. This contemplates a case where there is some distinct amendment that can properly be adopted and form a part of the Constitution as it had existed. There is another case where the question is to be submitted to the people at the end of every twenty years, whether a Convention shall be called to revise the Constitution, not to propose specific amendments but to cast over the whole ground and see whether the whole instrument wants revision. I think, sir, that this provision contemplates that the Convention shall be called only in a case where the whole instrument wants looking over, or a considerable portion of it, and which cannot be improved or amended in the manner provided by the first section through the Legislature, and a submission to the people. And when a Convention is voted by the people to perform this duty, it is in contemplation that the Convention shall devise and perfect an instrument as an entirety, a whole, a thing that will do for the organic law of the State. If all that was required had been the amendment of that particular section, the proposition whether or not this property qualification clause should be stricken out, it would have been far cheaper, and not only that, it would have been more direct for the Legislature to submit that question directly to the people and let them pass upon it, whether or not that clause should be stricken out of the present Constitution. It is hardly to be believed that the people, in voting this Convention intended to send delegates here to do precisely what might have been done without the aid of this Convention. Here we are met on the very first proposition that is presented with this cry of a separate submission. A submission of what? We do not know yet whether we will have anything to submit, and it begins to look as if we would never reach a vote on this question. It is not so clear to my apprehension that we are going to have this proposition to submit either conjointly or separately. But, so it is, that in reference to the first subject that is started in this Convention, day after day is spent in a discussion as to whether or not, it shall be submitted by itself. I have nothing to add to what has been said by way of argument to prove that this separate submission is not called for, but I will remind the committee of one thing that the question that was agitated more before the people, and was put more directly to the people by both political parties during the canvass which was to decide whether or not this Convention should be called at all, was this question of negro suffrage, and on striking out the section relating to color from the Constitution. I can very well conceive that perhaps the people did not understand it fully then, but I recollect it very well. I have heard it argued to them against the calling of this Convention, that the object would

be to incorporate this principle of negro suffrage and to strike out the property qualification for negroes. I apprehend that of the large number who voted against the calling of this Convention, a very large majority would give as a reason for voting against it to-day, that they thought the only object of calling the Convention was to reform the Constitution with reference to this very feature. They had it before them once, and if this question was not understood then, I do not know as it will be understood when it is submitted to them hereafter. I understand very well that they may have been in some confusion as to the terms of the Constitution as it was or as it ought to be. For we find my friend from Rensselaer [Mr. Seymour], making a slight mistake by saying that the proposition of the gentleman from Cayuga [Mr. C. C. Dwight], was to strike the word "white" out of the Constitution, for that is the language he used in his speech as it is reported. It is the fact that it is the very reverse, for the proposition of the gentleman from Cayuga is to strike the word black or rather "color" from the Constitution, and that is also the proposition presented in the report of the majority of the committee. The Constitution as it is proposed to be amended either by the committee, of the gentleman from Cayuga [Mr. C. C. Dwight], has neither the word white nor black in it, and that is why we say that it is better than it was before, because it effectually ignores the whole subject, and a stranger reading the Constitution as it is proposed to be amended either by the report of the committee or by the substitute would never learn that there was a colored man in the State of New York. Now I think that although this Convention have the power, and although they may, if they choose, submit any proposition separately, yet presumptively the action of this Convention is not to be submitted separately. We are called here to present an entire Constitution, and it never could have entered into the contemplation of those who established this mode of effecting an amendment or revision of the Constitution, that in the case of a mere simple proposition standing distinct and independent, such as was contemplated in the first section, allowing amendments through the action of the Legislature, and submitting the proposition to the people, a Convention should be required. Separate amendments are proposed without a Convention, and the main object of this mode is to have a revision of the Constitution. This is a deliberative body. This Convention is not simply to write out a proposed amendment to the Constitution and submit it to the people. We have other functions. We have got to go through the instrument and examine its various provisions, and see that there is a proper correspondence and adaptation between them, and see if when altogether it will make a proper instrument to be adopted as the organic law; and after that is all done it goes to the people. Now, suppose we start right here and declare that this question of suffrage, which it is hoped is to be the first question passed upon in this Convention, and provide that it shall be submitted separately to the people. Then a committee reports a basis of representation. How will we know, unless we get an arranged system and put it together, how to fix a basis of represen-

tation. It is generally supposed, I believe, that the basis of representation ought to be the classes to which the qualified voters or electors of the State belong. We may go on and prepare a system, and may put together the several parts and make what we call a very good Constitution; but whether it is good or whether it is a perfect absurdity will depend upon the final question that the people have got to decide whether they adopt the proposition that is recommended in this amendment or not. And so with other portions of the Constitution. I was in hopes that my friend from St. Lawrence [Mr. Merritt] would call up his resolution to-day and get a vote upon it, which would determine whether we should not defer the whole question as to what parts of the Constitution should be submitted separately until we should find what kind of an instrument we had adopted and how many parts it should consist of, and then see how we could change or modify the several parts to answer the emergency of the people refusing to ratify some part submitted to them.

Mr. MERRITT—If the gentleman will give way one moment I will say that while I fully believe that the resolution which the gentleman has referred to was a very proper one, and that it represents the opinion and judgment of the majority of this Convention, it ought to have been adopted at an earlier stage of the session. I thought perhaps, that it might to a certain extent stop this storm of words that we have had. The gentleman seemed to have been very much exercised on the question of the submitting of this particular proposition pending, and has coupled it with the merits of the question to such an extent that it might be regarded as trenching in some manner upon the rights of the minority as they couple it with the merits of the question pending. This is the reason why I thought best not to call it up. On that account I propose to delay action on it, at least until the suffrage question is disposed of.

Mr. COOKE—I have already detained the Convention longer than I intended, and with these remarks I will close.

Mr. CASE—Mr. Chairman—

Mr. HAND—I want to ask the gentleman a question—

Mr. T. W. DWIGHT—The gentleman from Madison [Mr. Case] has given way for a moment.

The CHAIRMAN—If the gentleman from Madison [Mr. Case] gives way, the gentleman from Broome [Mr. Hand] has the floor.

Mr. HAND—If the right to vote is a natural right I would ask in what sense the women of this country exercise their natural right. Is the voting done for them by the consent of the governed? If so, how express it?

Mr. COOKE—If it is a natural right? I believe the gentleman from Broome [Mr. Hand] has not yet come to vote by a natural right. My idea is that it is not altogether a political one; that voting is the means of participating in the administration of the government, thus exercising the natural right of self-government, but that the manner of exercise of that right is altogether political.

Mr. HAND—And that when some one exercises it for me without my consent still it is my right.

Mr. COOKE—I do not know that I understand the gentleman exactly. It is very difficult to understand upon what part of my argument the gentleman from Broome [Mr. Hand] predicates his question. He is naturally cautious himself, and sometimes, I think, his questions are slightly obscure.

Mr. HAND—There is no difficulty in any member of the Convention understanding me.

Mr. T. W. DWIGHT—I will only occupy a moment in explaining a misapprehension of the gentleman from Schenectady [Mr. Paige], who spoke in regard to my general position on the right of suffrage. I will simply restate my theory so as to make it clear, if possible, in a very brief space. My idea in a few words is, that there are two general grounds upon which persons may be excluded from the exercise of the elective franchise: the first ground is that of personal incapacity, and the other admits their personal capacity, but denies their admission to the elective franchise lest it might in some way tend to subvert society or to retard its progress. In treating severally of incapacities, I divided them into five classes, to which the gentleman from Schenectady [Mr. Paige] correctly referred. When the question was asked me by the gentleman from Essex [Mr. Hale] in what class I would place the right of females to vote, I said that if they were to be excluded on any ground (and whether they should be excluded I did not say) it would be because their admission to the elective franchise might tend either to subvert society or retard its progress. Not that they would willfully or deliberately exercise the elective franchise in such a way as to retard the progress of society, but that there might flow out of the fact that they were admitted to the elective franchise, some such influence upon the progress of society as would be injurious to it, as for example it might tend to subvert the family. If we should regard the family as being at the basis of society, then the admission of women to the elective franchise, if it would subvert the family, might tend to retard or submit society. That is what I meant.

Mr. BARNARD—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Barnard and it was declared lost.

Mr. McDONALD—I regard the vote which has been now taken by this committee is an intimation (and I know that is desired) that I should be as brief as I can in stating what my views on this subject are, and I will try and defer to that intimation. In order to get at a right mode of deciding these various questions as to what classes of persons should or should not vote, I think a different rule ought to be followed from any stated, and I will presently state what that rule is. It seems to me that as to the various rules that have been established here, the difference between them arises rather from the difference of definition of words used than from any difference in fact. If the gentlemen who are using the words "rights" and "privileges" will look into the Dictionary, they will find by the Dictionary one definition of "privilege" is "the exercise of a right," and the whole trouble, as I

conceive, arises from this difference. As regards voting, I think the same rule should be applied to regulate it as if applied to any other exercise of right of participation in political or governmental affairs, viz., that everybody or every class of persons have the right so to speak, to vote, or in any other way participate in governmental affairs, whenever and only when the exercise of that right will not be an injury to the community, considered collectively and as individuals. And that is the theory that I would go on. That is the theory by which I would test everything. Let us apply that test to the question now before us. The question immediately before us is, would it be an injury to the community to allow persons of color who have not two hundred and fifty dollars of real estate to vote? A large majority of the gentlemen of this Convention, I guaranty, would say not! Then why are we discussing it, when, as appears, by what has been said in these debates, that a large majority of this Convention fully and honestly believe that this restriction ought not to be in the Constitution? I repeat, why are we discussing this question of a separate submission of such question? Suppose the canal policy comes up here for discussion? Will gentlemen ask the committee, or will anything be heard here except on the question as to what is the right canal policy for the State? Will gentleman say that people have differences on that question which require a separate submission as to what shall be the canal policy of this State, and ask to have a separate vote at the polls upon it. Now, why not submit that separately as well as this? If the question of the judiciary comes up here, will we hear so much about what the people may think about this, or the people may think about that plan? Will any discussion be heard here except as to what will be the best judiciary plan for this State? Will any one ask that it be submitted and voted upon separately from the other articles which may be contained in the Constitution we shall frame? Now it seems to me that if gentlemen will remember what we are sent here for, and what our duties are, that we can decide this question as we ought to decide it. As the gentleman has stated, the Constitution can be only amended in two ways. It can be amended by the Legislature first passing on it, then another Legislature passing upon it, and then it must be approved by a vote of the people at the polls. If all three adopt it, it is a part of the organic law, but if either of these fail to adopt it, it is not a part of the organic law. After the people, by the first Legislature, and again by the second Legislature, have approved it, if the people at the polls say no, it is the end of it and it is not organic law, and so it is not if either of the Legislatures reject it. Why? Because the people as individuals at the polls or as represented by either Legislature have rejected it. But how is it as to ordinary law. Ordinary law is only ratified once, and then by the people in a representative capacity, and the minute it is thus ratified in that representative capacity it becomes law. It is the voice of the people of the State of New York through their representatives; but when you come to organic law, which is made, among other things, to restrict this power of pass-

ing ordinary law, it is regarded of so much more importance that it must be submitted to the people at least twice, and if it be by legislative action, three times, and unless the people each and every time ratify it, it is not organic law. Now, to those gentlemen who talk so much about being in favor of separate submission, I say I am in favor of separate submission here, and now. Here is the place provided for, and where the people have everything separately submitted. Why pass upon the Constitution by separate submission twice? Every proposition is separately submitted once. The gentleman from Clinton [Mr. Weed] has a chance here to vote as he pleases, and when he votes he votes or can vote, not only for himself, but for the entire constituency he represents, on each and every clause and proposition separately submitted. He or any other member, of this Convention, after this opportunity, should be the last to ask for a separate submission at the polls. But again, if it be true that in order to make organic law the people must pass upon it at least twice, why then do we not act up to that position? Why stand here arguing whether we should submit to the people a thing that the people through us do not believe in—that we, as the representatives of the people, cannot indorse? That the people through us cannot approve, and hence which cannot be approved *twice* by the people. Gentlemen talk about precedent. I tell them there is no such precedent, and I hope never will be. The gentleman from Schenectady [Mr. Paige] has already told you that the Convention of 1846 was in favor of retaining that proposition. The people, in 1846, through them, as delegates, were in favor of that, and they thereby ratified it in that form. It was submitted to the people at the polls and they ratified it. It was thus ratified twice by the people, and it thereby became a part of the organic law of the land. If a delegated Convention had not ratified it, it never would have become law, it never could have become law; and I have that confidence in the Convention of 1846, and I hope to have it in this Convention, that they never would pass upon and approve a proposition that they did not honestly believe in. I ask the gentleman from Clinton [Mr. Weed] if to-morrow there was an extra session of the Legislature called, and this proposition was submitted to him as a legislator to pass upon, would he pass upon it as a legislator and send the people anything he did not believe in himself? He might as well, acting as a Legislator, pass any law in that way. As I understand, an honest legislator has only one excuse for not acting according to his honest conviction, and that is that his constituents are by a large majority of a contrary opinion, and he wants to represent them, that is the only excuse I ever heard for a legislator doing a thing that he did not himself believe in, and that excuse is removed in this case, for the reason that our work has to be finally submitted to the people themselves, to be ratified or rejected by them. This, I claim, is the great reason why we cannot submit this question separately, simply because we do not believe in it and cannot approve it ourselves. And I cannot see how this Convention, no more than if it were



a Legislature, any more than if it were any other legislative body, can send down to the people any thing which they condemn and say themselves, ought not to become law. Again the gentlemen who favor separate submission state various reasons why this ought to be submitted separately. It has been called to their attention that if we submit this proposition separately, why not submit anything else separately? Why not submit the Canal question? Why not submit the Judiciary? Why not submit the Legislative? Why not submit all these and every other question separately? The last gentleman that spoke, claims that this ought to be done. Now it seems to me that if that is done, if you get half a dozen or more different propositions and submit them separately, you make a vote which practically cannot be carried out and get the true expression of the people. It is easy for men to talk here, but we must transfer ourselves down to the polls and if any man will go to the polls and have there half a dozen propositions to be submitted to the people, he will find that it is not practicable, that the people are not so well versed and are not so fully concerned with regard to what is being voted upon separately, that they will pay the attention that is necessary, and any man can go to any other friend and can get him to vote in this way or that way as he may ask, as a favor, on one or two of the propositions. I therefore claim that to submit all questions to the people, is not practicable, and that I do not think is claimed by any great number here at all. But those who advocate a separate submission in this case, go on and try to give reasons why this should be submitted separately, rather than other questions. The first reason they give is that it relates to who are to be the electors, who are to compose the future body politic of the State, and therefore it should be submitted rather than other questions. Let us test it by this reason: How many propositions are there here of the same kind? We have a proposition to exclude paupers. Why not submit that? That relates to a great many more voters than this does. We have a proposition here, that after two years we shall not admit foreigners to vote within thirty days after naturalization. That relates to the right of a great many more persons to vote. Why not submit that? We have a proposition here to apply the thirty days plan immediately. They tell you that they will exclude a great many thousand voters. Why not submit that? We have a proposition here in regard to the right of suffrage of the women of this State. Why not submit that? We have a proposition here in regard to the Registry Act. Why not submit that? We have a dozen propositions relating to the elective franchise. Why not submit each and every one of them? They all relate to the same subject-matter—to who shall compose the future body politic. If, then, you submit one, why not submit all? It is easy enough to talk about submitting this alone, and if this be the only reason, that it relates to the question of elective franchise, who are to be the voters? There is no distinction; none can be shown. All these other questions are like this and should be submitted with it. But there are certain reasons why I claim this question ought

not to be submitted separately, and they relate to this question alone. Now, let gentlemen be honest and let us see what is the real reason why a separate admission of this question is asked. Who wants this question separately submitted to the people? Who is it? Is there any gentleman here who will pretend that the great feeling among the people is founded entirely or mostly on treason? Is there any gentleman here who does not know that the feeling among the people, so far as it is expressed, is founded rather and mostly upon the prejudice that we all have, and that we cannot help having, and that is the feeling as against color? Is not that the real foundation for it? I submit it to the gentleman's knowledge of the people as he finds them at home. In regard to this proposition, I find those who are opposed to the colored man voting, in one party as well as in another. I find them on both sides; although I find on one side an entire class, I refer to the foreign Irish voters, who almost to a man oppose it. We cannot help it. That is their opinion, but the reason for it, I think, can be got at. They have that feeling. They have a fear, somehow, of the colored man, and they think they retain some advantage over him when they deprive him of the right of voting. This is a fact, we cannot help it. What do they want? They want this simple question taken by itself where they can get a chance to express their opinion about it, where they can get a chance to exercise and carry out their feelings without any danger of interfering with anything else. This is what they want. They want, in common parlance, as most of them would say, to kick the nigger without hurting or having a chance to hurt anything else. That is what they want. All I have to say in regard to that, is this, if I am to give a chance to any person or class of persons, to express their separate opinions on any subject, I prefer to give this extra privilege to those men whose opinion, thus expressed, will be founded on judgment and on reason. If we refuse to the people of the State of New York the right to state their opinions separately upon the question of judiciary and upon the question of canals, upon which they will act with reason and sense—if we refuse to give them that privilege (and they are more entitled to have it than they are this) I cannot then consent and give these men, who follow their prejudice, this extra privilege to exercise it separately. No, sir. If we are to make any choice, or have anything to do with it, we should so decide it and determine that we shall give the extra privilege of separate submission to those who will exercise it honestly and upon sound judgment rather than give it to those who will exercise it in accordance with and actuated by their prejudice. For this reason I am not in favor of taking this question, and giving it an extra preference and submitting it by itself. There is another reason. The form that this resolution takes, I claim, is a cheat upon the people, and it is fully illustrated by what happened upon this floor. The honorable gentleman from Brooklyn [Mr. Murphy] states that as a delegate and as a man, he does not believe that the property qualification ought to be applied, and yet as a delegate, he wants to send down to him-



self with others as a citizen that question and he will vote for it. That is the indication. Now that is rather strange. He does not send down the question that he votes upon at all. He votes because he believes that the colored men as a class ought not to vote, and because he cannot exclude the whole class, he will exclude as many as he can. Thus to accomplish this partial purpose he votes for a principle he admits on this floor to be wrong. Let us look at it when we get it down to the people. Let us see who will vote for it and who will vote against it. In the first place you will have those who vote against it on account of prejudice. Second, those who vote against it because they honestly believe the colored race ought not to vote, and in the third place you will have those men voting against it that honestly believe in the property qualification. Such a man says "I believe the property qualification ought to be applied as well to white and black." And as I cannot vote to apply it to all believing in the principle, I must apply it as I can, and hence he will apply it to the black man. Let it be remembered that such a man claims that this Convention should send down separately the broad question of property qualification as applied to all, and let the people pass upon it. It is an extra privilege, and you deny it to him. But you send down the property qualification as to blacks, and he says "if I cannot get this privilege as regards the proposition (which I believe in applying to both the white and black), I will apply it as far as I can." And he, therefore, votes to exclude the black man simply on the ground that he believes in property qualification. If there is any extra privilege to be shown, should it be shown to such persons for the purpose of allowing them the better opportunity of depriving a weaker race of the right of the ballot, and who have, as I claim, a natural right, *prima facie*, and in fact to the ballot. Shall we send down this question in such a form that it combines against this race these three classes of men, all acting from directly opposite reasons? I am not in favor of so presenting a question. I believe when an issue is to be framed for any purpose, it should be framed fairly, so that at least the weaker class shall not have combined against it a great many of the stronger class, just by the mode of forming the issue, and for that reason I am not willing that this question should be sent down. It has been suggested by the gentleman from New York [Mr. Colahan], if there is any question to go down, let it be a fair, open, direct question; let it be the broad question "shall the colored man vote?" Let that go down. If any question is to be submitted it would be much more just, but will any gentleman here send it down? Will any gentleman here pretend that the people of the State of New York are going back, are going to deny to this class a right which has been granted it from the foundation of the State. Do they propose to send that down? We might just as well send down the question whether we should return to monarchy. I take it upon the question of the exclusion of the colored race, as a race; the will of the people has been so long expressed that although we have a prejudice against them no person would propose it with any

expectation of success, and so I take it in regard to the property qualification. I take it that even if we should submit either of the two questions there would be a large majority in favor of abolishing the restrictions, but as I said before, let us be honest to ourselves. Let us, if we send down any question, send it down fair and square, so that it will be a fair test, and will not combine those elements that are opposite to one another for the purpose of depriving this race of its rights, and as it is clear that we will not thus present the question in a fair form, let us not send the question in the unfair and unjust form now proposed. But the great question which I wish answered, and which I have not heard answered, is, as I stated in the first place, that this Convention if it act honestly to itself, has no right to send down to the people anything that it does not itself justify. It was never done yet. The Convention of 1846 did not do it. Every single Legislature that has passed upon a question passed upon it because they believed it to be right, and let us do the same. Let us not show ourselves guilty of sending to the people what we ourselves do not approve, as representatives of the people.

Mr. HAND—I move that the committee now rise, report progress and ask leave to sit again.

The question was then put on the motion of Mr. Hand, and it was lost.

Mr. SILVESTER—I had not originally intended to take up the time of this committee at all with respect to this subject. But as the discussion has taken so wide a range, I feel it my duty to submit a few remarks to the committee, and will endeavor not to trespass on their attention any longer than is necessary. I shall not, sir, undertake to discuss the question whether the elective franchise be a right or a privilege. I adopt in the widest sense the doctrine of the Declaration of Independence, that every man is entitled to life, liberty and the pursuit of happiness, and that government rests upon the consent of the governed. But I also hold that to a certain extent, society possesses the power to regulate the manner in which that life shall be enjoyed, the extent to which that liberty shall be exercised, the method in which that pursuit shall be conducted by its own members. Every individual upon his entrance into society, relinquishes a certain share of inherent, indisputable right in order that he may preserve the residue. This is essential for the permanent protection of rights in society; and hence an eminent jurist has characterized political liberty as no other than natural liberty, so far restrained by human laws as is necessary for the general advantage of the community; and hence in my opinion, it results that as the elective franchise is to be exercised in society and by the individual as a member of society, it can be regulated by society. And this view, is substantiated by an opinion which was delivered in the Supreme Court of the United States in a case which was cited by the gentleman from Alleghany [Mr. Champlain] a few days since with reference to a different question in which Judge Washington enumerates among the privileges of the citizens of the United States, the right to exercise the elective franchise as regulated by the laws or Constitution of the State in which it is to,

be exercised. Thus clearly sustaining the position that whether the elective franchise be a right or a privilege as it is to be exercised in society, it can be regulated by the laws and Constitution of the State in which it is to be exercised. Now sir, entertaining this view, the only practical question as it seems to me to be considered by the committee, is this. How far is it expedient for this Convention, composed of delegates chosen by the electors of the State of New York to remodel the organic law, to restrict or regulate or extend the privilege or the right of suffrage, and what is the proper basis upon which this restriction or regulation or extension shall be founded? And in my view, the proper basis is that which was stated so lucidly by the gentleman from Oneida [Mr. T. W. Dwight] on Saturday last, and which I shall not, therefore, occupy the time of this committee with discussing. I am, therefore, decidedly opposed to the amendment which has been introduced by the gentleman from Kings [Mr. Murphy]. I am opposed to it, as seeking to apply a test to one class of our citizens which it does not seek to apply to any other class. I am opposed to it, as seeking to impose a property qualification upon one class of the citizens of this State, while not seeking to impose any such qualification upon any other class; and whatever qualification may be required for the exercise of the elective franchise should be impartial and equal in its operation upon every class of citizens. Our fathers laid broad and deep the foundations of the government upon the great eternal idea of the nobility of man as man, and it is our duty in this day to act in accordance with their ideas and to reduce to practice the doctrines which they then enunciated. The day for any class legislation has passed. The time for exclusive privilege has departed. The question as has been stated by my colleague is not whether in this State the black man shall be permitted to vote. That, as has been already stated by several other gentlemen, has been accorded to him ever since the organization of the State. But it is simply whether the property qualification is to be retained, and whether we are willing to place ourselves on record in this age as advocating the opinion that the man who to-day is not fit to vote, whose exercise of the elective franchise in the language of the gentleman from Kings [Mr. Murphy] is morally and socially wrong and tends to destroy the fair fabric of our democratic institutions, to-morrow becomes possessed of all the civic virtues; because through the caprice of fortune, or by the gift of some politician desirous of securing his vote, he has acquired a freehold of the value of two hundred and fifty dollars. That is the single and simple question that is presented. It is not a question as to his right to vote, but a question whether an odious property qualification, the relic of a past age, shall be retained in the Constitution framed by the delegates of the electors of the State of New York in 1867. In Europe, a short time since, when it was proposed to unite various States of Italy under one government, previous to Victor Emanuel's ascending the throne of Italy, the question whether very many of those provinces would submit to his control was sent to the citizens of those provinces,

to be decided by them at the ballot-box. When a difficulty recently occurred between France and Prussia as to certain territory on the confines of France, it was proposed, at one time, to submit the question to the citizens of that territory, to be decided by them in the exercise of the elective franchise. The Prussian House of Lords has just accepted the Constitution of the North German Confederation, notwithstanding its provision for universal suffrage. In Great Britain, under the influence of reform and constant popular agitation, the elective franchise has been constantly extended until public opinion is now rapidly advancing to that point when not only household suffrage, but manhood suffrage and the ballot will be demanded and accorded. In the light of all this progress which is taking place in Europe, in governments monarchical in form, and in many instances despotic in the extreme in practice—are we here in the Empire State of New York to insist on retaining in the Constitution as an essential of the exercise of the greatest right of citizenship, a qualification which is a relic and a child of Federalism? I am not now discussing the propriety of a qualification of any kind being under any circumstances and under any contingencies required of an elector. But I am opposed entirely to the qualification which the gentleman from Kings [Mr. Murphy] would seek to impose. Of all qualifications, a pecuniary qualification is in many respects the most unreliable and unsatisfactory, and the qualification which he proposes to place in the Constitution is the most unsatisfactory, as has been shown by the gentleman from Oneida [Mr. T. W. Dwight] of any pecuniary qualification, which could be inserted in that instrument. It is judging an individual by his means and not by his mind, by what he has, not by what he is, by his possessions and not by himself. I am aware that the gentleman from Kings [Mr. Murphy], disclaimed the idea that he was seeking to impose a property qualification, and asserted that he was himself opposed to such qualification. But his proposition results in nothing less than inserting a property qualification in the document which he proposes to submit to the people for their ratification. It places it in the body of the Constitution, and it goes forth to the people as our opinion of what is the proper qualification to be required of a certain class of electors, and then it permits the people, if they choose to do so, to expunge this proposition, and to amend the Constitution which we have formed and submitted to them. But, sir, I congratulate the gentleman from Kings [Mr. Murphy] upon the advance which he has made since 1846, for he was a member of that Convention, and I cannot find, in any of the proceedings during the whole of the discussions of that body, that his voice was ever raised, or his vote ever recorded in opposition to placing in that Constitution a property qualification, which has always been opposed by the friends of liberal progress throughout the world. But he alleges that his object is that the proposition may be submitted separately, and that the people of the State may thus have an opportunity to decide fairly and fully what their opinion is with respect to this question. I do not propose at this time to enter

upon any discussion of the propriety of a separate submission of this or any other clause of the Constitution. It has seemed to me from the very first that the whole discussion was premature, that we have yet nothing to submit. When this Constitution has been framed in all its parts, when the various committees have presented their reports, when these reports have been discussed in the Committee of the Whole, and when this framework of the Constitution has been fitted together, then, I presume, this Convention will act in accordance with the course adopted by the Conventions of 1821 and 1846, and that a Committee of Revision will be constituted which will review all the subjects which have been discussed, all the different amendments which have been proposed, will arrange and classify them, and then the Convention will deliberate upon the question as to the proper mode for the submission of that Constitution. I contend, therefore, that the question of separate submission cannot now be properly considered, and that this whole discussion has been premature. The question now is what Constitution shall we frame, what clauses shall it contain. Hereafter will be the time for us to discuss how that Constitution is to be submitted, whether together or in separate parts. But, sir, what are the reasons which have been urged for a separate submission? and what has been the reason urged by the gentleman from Kings [Mr. Murphy] for placing in the Constitution a property qualification? The only reason that he alleged was that this was the course pursued by the Convention of 1846; and because it was pursued by that Convention in a Constitution which they framed in 1846, and because they submitted the proposition separately, he alleges that we, in the year 1867, should be guided by their action. I am of the opinion that we were not sent here merely to copy the example of the Convention of 1846. However distinguished may have been that Convention, however illustrious the gentlemen who composed it, however patriotic, and however admirably fitted their work may have proved itself for the government and guidance of the State then and as it was then organized, we are not to follow the course which they adopted unless it is adapted and fitted for the present time. The very fact that we are here in this hall shows that the people desire changes to be made in that Constitution, and are of the opinion that an instrument suited to the wants of the age should now be framed, and that we should not follow in every respect the Constitution of 1846. When Anna Cora Mowatt was in England, and was commencing her career as an actress in that country, which resulted in such a grand success, before she had achieved distinction in that kingdom, she appeared one evening in the Princess' Theatre in London. Previous to her appearance in the evening, it was necessary that there should be a rehearsal in the morning by the different members of the dramatic corps. During the rehearsal she attempted to exercise her right as a star actress and to direct the manner in which the rehearsal should be conducted. She designated to the different persons who were occupying the stage, the proper positions which they should assume, at which wing they should depart and at which

enter, and as she was giving her directions, she was constantly met with the annoying response, "I played this character with Mrs. Butler; she gave me different directions." "I played this role with Mrs. Kean, and her directions were entirely opposite to yours." "I had the honor of appearing in this play with Miss Faucit, and she directed me to enter and depart from the stage in a manner different from that in which you are now directing me to do so." At last, irritated and galled by these resistances to her will, she at length announced "her declaration of independence" as she herself terms it, and said to those actors and actresses who were refusing to obey her directions. "When I make up my mind to be simply the imitator of Mrs. Butler or Mrs. Kean, or Miss Faucit, I will come to you for my instructions, but until then I will not." So I think we may say to gentlemen, who on this floor argue that we are to act in a certain manner and to frame a Constitution after a certain pattern, simply because the Convention of 1846 did so. "When we make up our minds to be simply the imitators of the Convention of 1846, then we will go to that Convention for our instructions." The gentleman from Kings [Mr. Murphy] has also said that we should follow precedent in that matter—that we should follow precedent because it is a safe course of action so to do. I have great respect for precedent; but if the gentleman should go further back in the history of precedent than the year 1846, to the records of the Convention of 1821, I think he would find that the question of the adoption of the Constitution then framed was then submitted altogether and not separately. If I am not entirely mistaken, that was the course pursued in 1821. I yield to no one in reverence for antiquity. I reverence its learning, its wisdom, its works of art, its literature, its poetry, its noble examples. But I recognize the fact that there is also a living, breathing, vital present and that it is in respect to the demands and necessities of that present that we are called to act. We have made great advances since 1846. It was then considered as a great mark of progress that there was a daily steamboat from Albany to New York by which intelligence of the deliberations at the capital could be carried to the commercial metropolis. Now the proceedings of this Convention are each day transmitted by telegraph to every part of the State as soon as its session has been brought to a close. We have advanced materially; we have advanced physically; we have advanced philanthropically. Are we to be met with the assertion that the only thing in which we have not advanced is in respect to the science of government? It is hardly in accordance with American ideas and sentiments to be guided so exclusively by the past. Those individuals who are so constantly referring to the past as the only reason for a particular course of action, remind me of an anecdote which, with the permission of the Convention, I will relate. An old lady had a china teapot for which she had a great affection. It had belonged to her mother, her grandmother and her great-grandmother, and she had never been willing to use any other. One day the handle was broken off, but she still continued its use.



and declared that out of no other teapot would she ever drink tea. Then what she called the "snozzle" was broken, and though her attention was called to this defect, she insisted upon continuing its use. Finally the bottom fell out, and then the question was asked of her out of what teapot she would now drink tea, and she replied: "It was my mother's teapot, my grandmother's teapot, my great grandmother's teapot, and though the handle is broken, the snuzzle is gone, and the bottom has fallen out, out of no other teapot will I ever drink tea." Now, sir, to pass to another subject. The gentleman from Rensselaer [Mr. Seymour] who addressed us on Saturday last, undertook to diminish the importance of this subject, and to place the question of finance and internal commerce in this State above the question of human rights. He said that the question of the financial policy of this State, the debt of this State, the canals of this State and the internal commerce of this State, were questions vastly superior to the question of the elective franchise and of the rights of the citizen. I sir, do not so understand political economy. I consider human rights higher than questions of finance, higher than questions of policy, higher than questions of internal commerce; and that in framing a Constitution under which the State for many years is to be regulated, and under which it is to be governed, one of the greatest questions which can occupy the attention of a Convention, is the question, which is fundamental, who are to exercise the great sovereign rights of citizens, and what are the regulations and rules upon which those rights and privileges are to be exercised? There are some other remarks, sir, which were made by the gentleman from Kings [Mr. Murphy] which I would like to consider, but I will now not detain the committee to do so. But while disapproving entirely of the amendment of the gentleman from Kings [Mr. Murphy], there are several clauses in the amendment proposed by the report of the committee, which I cannot support. And first, sir, I cannot support that clause which proposes to disfranchise what it terms the paupers of the State. I agree with what is said by the committee with respect to the necessity of preserving the purity of the ballot box. I admit that the regulation of the elective franchise and the endeavoring to preserve it in its purity, is one of the great safeguards of republican institutions; and I admit the force of the arguments which have been urged by gentleman here, that it was entirely wrong that where electors in the western part of the State had conscientiously and intelligently deposited their votes in the ballot box; those intelligent and conscientious votes should be overwhelmed entirely by the votes of individuals who had not bestowed any attention upon the subject under discussion. I would, at one time, have been willing to sustain the proposition of the committee, if it might have been restricted to persons who at the time of the election, or immediately preceding the election, were inmates of any public almshouse, but I am convinced that even that restriction could not be made to operate justly and equitably. It may fall to the lot of the best citizen in the land, through reverse, to be placed in that unfortunate condition. The gentleman who addressed this

body a day or two since instanced an example of a citizen in his county who once occupied an honorable position in the Legislature of this State, who was well versed in the economy of both political and social life. Yet he had been reduced by misfortune to the necessity of accepting an asylum in the almshouse. Would you disfranchise such an individual? But, sir, if you attempt to disfranchise those who are at the time actually in the almshouse, and those who are actually public paupers in the strictest sense of the term; the restriction can easily be avoided, any prominent politician can furnish the means, or his party can furnish the means, to transport for the time being those so called paupers out of the almshouse, and thus give them the elective franchise in order that they may vote at the ensuing election. I am, therefore, decidedly opposed to that clause of the report of the committee which would seek to disfranchise what it terms the paupers, and I am also opposed to the clause which would seek to change the Constitution as it now stands by requiring citizenship for thirty days instead of ten days as a condition for exercising the elective franchise. As an original question I might support the requirement of thirty days' citizenship previous to depositing a ballot, but as it will operate injuriously to many of those who have already declared their intention to become citizens, I, sir, cannot give that clause my support. If it is altered so as to be prospective in its character and applicable only to those who shall hereafter declare their intentions, and thus not operate injuriously upon the large class of our fellow citizens of foreign birth who have already taken the preliminary steps to become electors, then I will not oppose it; as it now stands, and as it will operate injuriously upon foreigners who have declared their intentions to become citizens, I shall be obliged to oppose it. The proposition of the gentleman from Cayuga [Mr. C. C. Dwight], it seems to me meets many of the objections which have been urged and is entirely preferable to the amendments introduced by the committee. That substitute has the advantage of being in the present Constitution; but not simply because it is in that Constitution would I support it, but because first there is no necessity for any change in the phraseology of that section of the present Constitution, otherwise than with respect to the property qualification. And again, sir, the words of that section have received, as far as possible, judicial construction, and where we can retain any part of the instrument which has been judicially construed, and thus not open a new question for discussion, I think it advisable to do so. I would desire that there should be annexed to the substitute a more stringent qualification with respect to illegal voting. I would even go so far as perhaps to follow the suggestion made in one of the daily papers this morning, that where illegal and fraudulent votes had been polled, and that fact had been made manifest, such election should be rendered null and void. Before closing my remarks, I desire for a moment to refer to an allusion made by the gentleman from Allegany [Mr. Champlain] a few days since in respect to what he termed "the better days of the republic." He described those



as the better days in which an inhabitant of this land, of foreign descent in the prison of a foreign government had been protected by the flag of the United States, and his rights had been defended by a man-of-war belonging to the United States. I admit, that that one act of that administration, was proper and right; it was truly an American act, and one of which every American is proud. Wherever the flag of the United States floats, whether on the land or on the sea, it should protect every citizen. But I cannot agree with that gentleman that those times as a whole were the better days of the republic. If my memory serves me right those were the days when our citizens, over the length and breadth of this land, were not all equally protected; when four millions of human beings were kept in bondage; when in the halls of the Congress of the United States the doctrines of secession and disunion were openly preached; when the administration then in power, and that which succeeded it, did not make any attempt to repress those doctrines, either by force or by argument. Those were the times when a Senator of the United States was attacked in his place in the capitol, because he had dared to speak disrespectfully of the "peculiar institution," and when journals at the north could apologize for the act. I differ, sir, with the gentleman as to those being the better days of the republic. I consider these are the better days, these, in which over the length and breadth of our land the flag of the United States floats over a nation of freemen; these, when the doctrine of secession and rebellion has been defeated on the field of battle; these, when not only on foreign soil and foreign seas, the flag of the United States protects its citizens, but when it protects the citizen of the United States in South Carolina equally as well as in Massachusetts, in the city of Charleston as in the city of Boston. These I consider to be the better days of the republic, when, after a contest more terrible than any which the world has ever witnessed, the stars and bars of the rebel confederacy finally went down before the stars and stripes of the great republic. These are the better days in which, after having passed through the terrible ordeal of the late contest, peace once more is ours, not by any disgraceful compromise with treason, not by any concession to traitors, but by the complete overthrow of the armies of the rebellion and their unconditional surrender to the authority of the United States. These, in my judgment, are the better and more glorious days of the republic.

Mr. VEEDER—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Veeder, and it was declared to be lost.

The CHAIRMAN announced the question to be on the amendment of the gentleman from Kings [Mr. Murphy] to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

The question was put on the amendment of Mr. Murphy, and the affirmative vote taken.

Mr. FOLGER—I call for a division of the question.

Mr. VERPLANCK—It seems to me, sir, it is hardly fair for the majority, we having already

been here from 11 o'clock until 2, and then from 4 until 8, to press a vote on this question at the present time. Several members are sick, and many have left the Convention, and I submit whether it is a proper time to take the question.

Mr. FOLGER—I rise to a point of order. I wish to know on what question the gentleman from Erie [Mr. Verplanck] is speaking.

Mr. VERPLANCK—I am speaking to the magnanimity of this body if there be any such thing, and against pressing this question to vote now. I move that this Convention do now adjourn.

The CHAIRMAN—The Chair would inform the gentleman, that is not a motion which can be made in Committee.

Mr. VERPLANCK—Would it be improper to make the motion that the Committee rise?

The CHAIRMAN—The Chair thinks it is entirely proper to make that motion.

Mr. VERPLANCK—Then sir, I move that the Committee do now rise, report progress and ask leave to sit again.

Mr. BICKFORD—I rise to a point of order—the Chairman had put the question on the proposition of the gentleman from Kings [Mr. Murphy], and the affirmative was already taken.

The CHAIRMAN—The Chair would inform the gentleman from Jefferson [Mr. Bickford] that the gentleman from Ontario [Mr. Folger] called for a division of the question, and since that time business has intervened, and therefore the motion of the gentleman from Erie [Mr. Verplanck] is entirely tenable.

Mr. S. TOWNSEND—It has been so long since this amendment was read, and so much has been said, to which perhaps I have not been a very attentive listener, that I have not a very clear idea of the two propositions; I ask that the amendment be read.

The CHAIRMAN—That is not the question now before the committee, the question now is on the motion that the committee rise.

Mr. CHESEBRO—I ask the gentleman from Erie [Mr. Verplanck] to withdraw his motion for a moment.

Mr. VERPLANCK—I will do so.

Mr. CHESEBRO—I move, sir, that the Chairman of the Committee on the Right of Suffrage make the speech which he desires to make in closing the debate, and that upon closing his speech the gentleman of Westchester have the right to demand that the debate shall be closed.

The CHAIRMAN—The Chair is of opinion that such a motion cannot be entertained in the committee.

Mr. VERPLANCK—I renew the motion that the committee do now rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Verplanck, and it was declared lost.

Mr. GREELEY—I desire only to state to the gentlemen who are in favor of the amendment of the gentleman from Kings [Mr. Murphy], that they will have a full and fair opportunity for a vote, when we come to take the question upon agreeing with the report of the committee in the Convention; so that it will make no difference as to what is decided on in the committee.

Mr. VERPLANCK—I had supposed that in the

absence of the gentleman from Kings [Mr. Murphy] who moved this amendment, and when so many others are absent, the majority would not press a vote on this question.

Mr. HUTCHINS — I rise to a point of order, I would like to know what motion is pending now?

The CHAIRMAN — The Chair is of the opinion that the motion on the amendment of the gentleman from Kings [Mr. Murphy], is pending.

Mr. VERPLANCK — I did not intend to discuss the question, but in the absence of the gentleman from Kings [Mr. Murphy] I desire to say a few words. The amendment proposed by that gentleman has not been fairly stated before this Committee. In what position did the gentleman from Kings find the colored population of this State when he made the amendment. He found that there was a class of colored citizens entitled to vote, and he supposed that the members of this Convention who claim to be the peculiar friends of the negro race would not consent to let the colored men who now have the privilege of voting be disfranchised. What is his amendment? His amendment is simply that it should be separately submitted to the electors whether the rest of the colored citizens should be authorized to vote. He does not ask this Convention to disfranchise those who are now entitled to vote. But the gentleman from Columbia [Mr. Silvester], and other gentlemen who have discussed this question, have claimed that the gentleman from Kings [Mr. Murphy] and the democratic party proposed to keep up the property test for colored men. No such thing is proposed. Now I do not intend to discuss the origin of society, nor how society or civil government originated. It is enough for me to know that in this State we have a civil government. It is that civil government which always determines the right of suffrage, and no other power can determine it. The civil government of this State confers the right of suffrage upon all male citizens of the age of twenty-one; it withholds it from citizens who are under twenty-one; from women and from certain colored citizens. The colored citizen is represented, and all his rights are respected and cared for, the same as the rights of minors and the rights of women; but for prudential reasons the civil government denies the right of suffrage to minors and women, and a certain class of colored men. Another class of colored men have this right under certain qualifications, and the question is, shall the rest of the colored men have the right to vote. I think it can hardly be supposed that the friends of the colored race in this Convention desire that they should vote unless the majority of the qualified voters shall so decide, and it occurs to me that the proper way to ascertain whether the majority of the electors of the State desire that these men should vote is, to present that question as an independent amendment not embarrassed by any other consideration. That is the fair way to settle the question, I do not intend to discuss this question, sir, but I propose simply to read what was said by distinguished men in the State of Massachusetts in 1853 upon this subject of separate submission. And before doing so, I desire to state that in the Massachu-

setts Convention of 1820 each amendment proposed by that Convention was separately submitted to the people, and a majority of the provisions were adopted and became parts of the Constitution of that State. Some of the provisions were rejected; but the vote on the several amendments shows that the people were not confused as the gentleman from Westchester [Mr. Greeley] said they would be in this State if any proposition was separately submitted. They voted intelligently, because some propositions were approved and some defeated by a few hundred votes, and others by thousands of votes. In the Massachusetts Convention of 1853, Mr. Choate, then Attorney-General of the State, and one of the most eminent men in New England, upon the subject of separate submission, after stating that he had offered an amendment proposing that certain sections should be submitted separately to the people, said:

"As I understood the learned Chairman [Mr. Boutwell], this morning, to suggest that he should himself favor the separate submission of everything to the individual voter, which it can be shown, may be practicably and properly done. I anticipate his support. I have paid some little attention to the details of this motion, and I count upon his co-operation."

And further on he says:

"It simply, fairly, and in good faith, without modifying in the least degree the substantial action of this Convention, enables every voter in Massachusetts to express his own opinion, directly upon so substantial, so distinct and important a proposition as to change the judicial tenure, uncoerced by its connection with any other subject—to the intent that every voter shall exercise his own reason and free will upon a subject distinct from every other branch of the entire subject committed to him—a proposition so reasonable, that unless it is attended with the technical difficulty indicated this morning, by the honorable Chairman of the committee, would meet with universal approbation. It should be borne in mind and it strikes me that it is a principle which should govern us that we had to perform a distinct branch of duty. We were to express, and procure to be adopted—if we could—by this Convention, our own opinions concerning amendments to the Constitution. That duty we have been engaged in arduously for ninety days, and we have done. We have conferred upon it, we have voted upon it, we have accomplished it, and we have completely and in good faith, finished that branch of our duties, the expression of our own opinions touching amendments to the Constitution. The other piece of work submitted to us, and to which we have now arrived, is exactly to enable the people to do their part of the great concurrent work, in amending the Constitution in the best practicable manner on their part. And I apprehend that nobody can feel any desire whatever, to give it such a direction before the people, as shall lay them under coercion to adopt our views whether they like them or not. We should all feel, and should all co-operate to bring the matter before them in such a shape that they will express their own views exactly, *without coercion from any of its connections.*"

I desire to read a word or two further from

these debates. Governor Morton, one of the most distinguished men of that State, upon this subject of separate submission said :

"By presenting these questions altogether you coerce the people on the one hand, or offer a bribe to them on the other hand. You say to them, in effect: 'If you will take this bitter thing, you shall have also the sweet thing;' or it may operate upon them in the way of constraint, inasmuch as you say: 'If you do not accept this which you dislike, you shall not have that which you do like.' This, I contend, is an *infringement of the rights of the people.*"

Now, I have read these extracts, because they were not manufactured for this occasion, and because they are the views of two distinguished gentlemen of different political parties in that Convention, and I trust that their opinion will have proper weight with this Convention. The gentleman from Westchester [Mr. Greeley], on the first day of the assembling of this Convention, proclaimed that the democratic party had determined to vote against the Constitution we should form, and by refusing to submit the proposition of colored suffrage separately, he may array the Democratic party against the Constitution adopted by this Convention. Why not give the colored race, at least a fair chance? They come to this Convention and say "gentlemen give us the right of suffrage." Will this Convention say, "we will see about it; we will put it with other subjects in which the people are interested, and which will be presented by the Committee, and let the people in that form pass upon the question of your suffrage?" Sir, that is unfair to the colored people. What the colored people desire is to vote, and they will not be satisfied unless they can have the merits of their cause presented to the people unobscured by other considerations.

Mr. GREELEY — I would like to ask the gentleman [Mr. Verplanck] a question. Would he be willing to submit the question to the judgment of the colored people of this State, and let them determine whether they would have this question submitted alone or as a part of the Constitution.

Mr. VERPLANCK — Mr. Chairman, this is not an age in which Constitutions are particularly revered. It is claimed that they obstruct the progress of the age. In answer to the gentleman from Westchester [Mr. Greeley] I say that I know of no way in which the judgment of the colored men could be ascertained as to how they would prefer to have their right to vote submitted to the people. I know of no way of submitting any proposition which this Convention may recommend except the way provided by the Legislature, and that is to submit the Constitution we shall form to those who now hold the civil government, the qualified electors of this State. This Convention can ascertain the will of the people in no other manner. I trust that this question will not be urged to a vote to-night, because I am satisfied that if the gentleman from Kings [Mr. Murphy] was in his place, he would consent to modify his amendment in the manner suggested in the debate by the friends of his proposition. I know from conversation with that gentleman that he has no wish that the property qualification should be

retained, unless the peculiar friends of these men desire it. If they do not, the gentleman from Kings [Mr. Murphy], and his political friends on this floor, are entirely willing to strike it out of the Constitution. I may say, political friends because the "happy family," that occupied this hall for the first two or three weeks of this Convention has been broken up. My friend from Rensselaer [Mr. M. I. Townsend] brought that about when he claimed some days ago that the republican party were the disciples of Thomas Jefferson, and that the democratic party had strayed from his precepts. The "happy family" was then broken up, and political parties appeared in this Convention. I hope, Mr. Chairman, that this committee will not take the question in the absence of the gentleman from Kings. [Mr. Murphy.]

Mr. VEEDER — I really do not understand, sir, from what source has sprung the great haste which is exhibited here to-night — this desire to force this question to a vote. I recollect in my experience when a member of the Legislature, of several occasions, when transactions of a similar character occurred and where the question involved was simply a political one. But, sir, I am surprised—

Mr. FOLGER — I rise to a question of order. The gentleman from Kings [Mr. Veeder] is not speaking to the pending question.

The CHAIRMAN — The Chair is of the opinion that the point of order is well taken.

Mr. VEEDER — I will endeavor to proceed in order. I beg the indulgence of the committee to be allowed to say, that I know there are other gentlemen who desire to present their views upon this question. When the courtesy has been extended unanimously by the Convention to various gentlemen who have been heard, I cannot see any good reason why other gentlemen should not be allowed that privilege. Therefore, with that idea, I move that this committee do now rise, report progress and ask leave to sit again.

The question was then put on the motion of Mr. Veeder, and it was declared lost. A division being called for, it was again declared lost, by a vote of 46 to 55.

Mr. PAIGE — I would ask, as a matter of parliamentary law, whether an amendment can be moved in Convention which is not offered in Committee of the Whole?

The CHAIRMAN — The opinion of the Chair is that an amendment not offered in Committee of the Whole cannot be moved in Convention.

Mr. PAIGE — I am satisfied that this amendment, proposed by the gentleman from Kings [Mr. Murphy] is susceptible of amendment, and if an amendment was desired to be proposed to it, I think it would be exceedingly unkind and unwise to force a vote upon it to-night.

Mr. FOLGER — In reply to the suggestion of the gentleman from Schenectady [Mr. Paige] I will say, that so far as I know, the wish of the majority is only to take a vote on the amendment of the gentleman from Kings [Mr. Murphy] for the purpose of disposing of that this night, and at a future time to allow other amendments to be proposed.

Mr. GREELEY — I desire to say that from day to day we are abused by the democratic papers



for doing nothing, and for taking up all our time in talking —

Mr. VEEDER — I rise to a point of order. The gentleman himself [Mr. Greeley] has made two-thirds of the speeches that have been made.

The CHAIRMAN — The Chair wishes to say to members that it has heretofore permitted gentlemen to suggest questions of order without itself so doing; but, as a question of order has just been raised and decided in regard to one member of the committee who interrupted a gentleman without addressing the Chair, if other gentlemen undertake to violate the rules of order, the Chair will be compelled to enforce the rules of order without motion on the part of members.

Mr. CONGER — It was my purpose to have addressed the committee on the general questions embraced in the original proposition and to the amendments that are pending; and I would take the floor to-night, were it not with me a question of exhaustion. If it is the purpose only, of the gentlemen who press this vote, now to get a vote upon the proposition of the gentleman from Kings [Mr. Murphy], and then as suggested by the gentleman from Ontario [Mr. Folger], to rise and report progress, I would with the assent of the majority of the committee waive for the present the duty I owe to the committee in expressing such views as I wish to express to-night until sometime to-morrow. I do not wish, sir, in the views which I shall present to this committee, to seem to take the slightest advantage in any preliminary opposition on the question that may be taken; therefore, if it is the desire of the committee that their vote should now be taken upon the pending amendment, I will, with the consent of the committee, take the floor prior to its adjournment, that I may state my views on the main question. I do not ask any special indulgence. I do not know that I have a right to ask it, but as I said before, I would take the floor to-night if it were not to me a question of physical exhaustion.

Mr. CHESEBRO — I did not understand the gentleman from Rockland [Mr. Conger], to make any specific motion, but I did understand him to say that he intended to make some remarks to the committee on this question. He suggested that his physical condition incapacitated him to make any remarks to-night, and on account of that, I move that the committee do now rise, report progress and ask leave to sit again.

Mr. RATHBUN — I wish to inquire of the gentleman from Rockland [Mr. Conger] if he wished to be understood, if he could have the floor to-morrow morning on the question, he would have no objection to a vote being taken to-night.

Mr. CONGER — None at all, if the committee will not charge me with having failed to do my duty on the main question in advance of the present vote.

The question was put on the motion of Mr. Chesebro, and it was declared lost.

A division being called for, the motion was declared lost by a vote of 41 to 61.

Mr. LARREMORE — I desire that the amendment may be read.

The SECRETARY proceeded to read the amendment of Mr. Murphy.

Mr. VEEDER — I did desire to say a few words in reference to this subject. I did also desire to say them, before the vote was taken in the Committee of the Whole. I have endeavored, thus far in the Convention, to extend every courtesy to gentlemen, and I do not ask for it personally, but I know there are other gentlemen who desire to be heard in Committee of the Whole, and because of that, I now move that the committee rise, report progress, and ask leave to sit again.

Mr. RATHBUN — I rise to a point of order that the question has just been taken on the same motion made by the gentleman from Ontario [Mr. Chesebro], and there has no business intervened since,

The CHAIRMAN — The point of order is well taken.

Mr. VEEDER — I respectfully call the attention of the Chair to the point that since the motion was made by the gentleman from Ontario [Mr. Chesebro], the Secretary has been called upon to read the amendment of the gentleman from Kings [Mr. Murphy], and that business having intervened, in my judgment my motion is now admissible.

The CHAIRMAN — The Chair is of the opinion that the point of order was well taken by the gentleman from Cayuga [Mr. Rathbun], and that it was the right of the gentleman to have the amendment read so that he could vote understandingly on the subject.

The question was then put on the amendment of Mr. Murphy and it was declared lost. A division being called for it was again declared lost by a vote of 29 to 78.

Mr. FOLGER — I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Folger, and it was declared to be carried.

Whereupon the Committee rose, and the President resumed the Chair in Convention.

Mr. ALVORD, from Committee of the Whole, reported that the Committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the House and ask leave to sit again.

The question was taken upon granting leave, and it was declared carried.

On motion of Mr. AXTELL, the Convention adjourned.

THURSDAY, JULY 18, 1867.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. C. D. W. BRIDGEMAN.

The Journal of yesterday was read by the SECRETARY, and there being no objection thereto, it was declared approved.

Mr. FRANK presented a memorial from the Genesee Baptist Association asking the incorporation into the organic law of the State a provision against allowing the State or municipal governments to appropriate funds for sectarian institutions.



Which was referred to the Standing Committee on the Powers and Duties of the Legislature.

Mr. FOWLER presented the petition of J. K. Brownson and 38 others of Woodstock, Madison county, on the same subject.

Which took a like reference.

Mr. CURTIS presented the petition of E. Francis and 14 others on the same subject.

Which took a like reference.

Mr. GROSS presented a petition signed by eight hundred citizens of Rondout and twenty-two petitions from the citizens of the city of New York against a prohibitory legislation.

Which was referred to the Committee on Adulterated Liquors.

Mr. McDONALD—I rise to a question of privilege. I find that in certain remarks that I made on Tuesday, I am reported as saying that we had refused to make an allowance to the reporters of thirty dollars' worth of stationery, "which the Convention had a right to do." Now, Mr. President, I will not say that these words did not escape my lips. I can only say that if they did, they were without thought and were not intended. On the contrary, my opinion as a matter of fact has been that we have no power to give to the reporters that amount of stationery, and for that very reason, and no other, I stand recorded against that proposition. I further understand that that proposition is again to come before this Convention, and I shall again be compelled to vote against it for that very reason, that we have no power. If it had not been that I was thus recorded in the vote of this Convention, and may again be so recorded, I should not have arisen to trouble the Convention by making this statement. I ask, therefore, that before the debates are finally printed the report of my remarks may be amended so that it shall state that we have *not* the power instead of saying that we have the power.

The PRESIDENT—The Chair is informed by the Stenographer that the correction has already been made.

Mr. ALVORD presented the petition of Charles W. Tomlinson and twenty-nine other citizens of Syracuse, against donations of public money by the State to sectarian institutions.

Which was referred to the Committee of the Powers and Duties of the Legislature.

Mr. GREELEY—I am informed that by a decision of the court of appeals, an act of the Legislature, by which in the making of drains, they could, where necessary, be extended through the adjoining lands of other parties, has been decided to be unconstitutional. I hold in my hand the memorial of Henry C. Spaulding in favor of adopting a constitutional provision, empowering the Legislature to pass laws providing for that important—increasingly important—subject; and I ask its reference to the Committee on Industrial Interests.

The memorial was referred as requested.

Mr. GREELEY also presented the petition of Rev. J. H. Austin and others for a separate submission of a clause of the Constitution authorizing the Legislature to suppress the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated liquors.

Mr. GREELEY also presented the petition of Mrs. Louisa Howland and eleven other citizens of Mount Vernon, Westchester County asking suffrage for women.

Which was referred to the Committee of the Whole.

The PRESIDENT also presented the memorial of the Union Republican Association of the Fifteenth Assembly District of the city of New York against the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

The PRESIDENT presented a communication from the Senate Committee appointed to investigate into the management of the canals of this State, and transmitting a copy of the testimony taken by said committee.

Which was referred to the Committee on Canals and the testimony ordered to be printed.

Mr. SMITH gave the following notice, that he would move to amend rule 46 by adding thereto the following:

"It shall be the duty of the officers of the Convention to prevent smoking upon the floor of the Assembly chamber and open spaces adjacent thereto, during the sessions of the Convention."

Which was laid on the table under the rule.

Mr. LAPHAM gave notice of motion to reconsider the vote by which the following rule was rejected:

"The previous question shall be, 'Shall the main question be now put?' It shall be decided without debate, and if determined in the affirmative, no further debate or amendment shall be in order, and the main question shall be on the adoption of the resolution or other matter under consideration. When amendments shall be pending, the question shall be first taken on the amendments in their order, whether such amendments shall have been offered in Convention or recommended by the Committee of the Whole."

Which was laid on the table, under the rule.

Mr. MERRITT—By an inadvertence in engrossing one of the sections of the article submitted by the Committee on the Organization of the Legislature, the following sentence was omitted. I ask that it be added to the section:

"The legislative term shall begin on the first day of January, and the Legislature shall every year assemble on the first Tuesday in January, unless a different day be appointed by law."

The PRESIDENT—There being no objection, the omission in the report will be supplied as stated by the gentleman from St. Lawrence [Mr. Merritt].

Mr. MERRITT—It may be proper for me to say in view of the fact that the gentleman from Jefferson [Mr. Merwin], who as a minority of the Committee saw fit to submit an elaborate report in support of his views so far as those views differ from the report of the majority of the Committee, that that submission took the Committee by surprise. I only refer to it for the purpose of saying that the various propositions which were referred to the committee having in view the organization of the Legislature were carefully con-

sidered, and it was thought that if the report should be made in writing, it would be too elaborate and injustice might be done to some of the propositions. We also thought we could present our views in the Committee of the Whole, and there would be no embarrassment or expression of adverse opinions affecting the different propositions that were submitted to the committee, so that the movers of these propositions could present them without any such embarrassment as might grow out of a written argument in support of the views of the committee. It was no want of respect to the gentleman who offered the various propositions, or to the propositions themselves, that they were not considered in a written report.

Mr. GREELEY—I offer the following resolution to close debate on the pending subject, saying, however, that I do not wish the Convention to adopt the particular time I have named, but I only wish that the question of the time shall be settled so that members will be here to vote :

*Resolved*, That debate in Committee of the Whole on the report of the Standing Committee on the Right of Suffrage, be closed in Committee of the Whole with this day's sitting, and in Convention at one P. M., on Monday.

Mr. DEVELIN—I yesterday, rose to propose to discuss the resolution which was offered by the gentleman from Westchester [Mr. Greeley], and the Chair ruled that the resolution need not lay over one day, inasmuch as it had reference to pending business before the Convention. The business at that time was resolutions, and had no regard to the Committee of the Whole or to the discussion of the suffrage question. In my judgment, the Chair was in error in its ruling for the reason that the suffrage question was not then pending any more than any other subject before the Convention, but the Convention was proceeding with business under the order of resolutions. I rise again and propose to debate the resolution which is now offered by the gentleman from Westchester [Mr. Greeley].

The PRESIDENT—The Chair rules in the same way, and gives as his authority the second subdivision of the 29th rule:

"Resolutions giving rise to debate, except such as shall relate to the disposition of business immediately before the Convention, to the business of the day on which they may be offered, or to adjournments or recesses."

These are excepted from the rule requiring resolutions to lie over one day for consideration. The business of this day is the report of the Committee on the Right of Suffrage.

Mr. DEVELIN—There is no evidence that the report of the Committee on the Right of Suffrage is to be considered to-day.

The PRESIDENT—Does the gentleman [Mr. Develin] appeal from the decision of the Chair?

Mr. DEVELIN—No, I will not take any appeal.

Mr. MURPHY—I do not understand entirely what is the scope of the resolution of the gentleman from Westchester [Mr. Greeley]. I have no objection to the resolution if I understand that all amendments to be proposed or offered may be offered without discussion.

Mr. GREELEY—Certainly, that is the proposition.

Mr. TAPPEN—I move to amend, by inserting the word "Tuesday," instead of "Monday."

Mr. GREELEY—I will accept the amendment, or anything that is agreeable to the Convention, only we must close the debate.

Mr. VERPLANCK—I think we would hardly be able to finish this discussion in one day's session of the Committee of the Whole. I understand that gentlemen have amendments to offer in reference to the question of suffrage, upon which they would like to occupy the floor in Committee of the Whole, which they could not do in Convention. No amendment can be offered, under the rules in Convention which had not been offered in the Committee of the Whole, and it must be obvious that if we are to have debate on any particular amendment offered, the resolution should not be adopted.

Mr. GREELEY—I understand that any amendment may be offered after the close of debate, and that amendments offered in Committee of the Whole may be offered again; that the closing of debate will not foreclose the offering of any amendments or the voting, or any number that gentlemen may choose to offer.

The PRESIDENT—The Chair will state, as there seems to be some misapprehension, that an amendment which shall be offered in Committee of the Whole under the rules of the Assembly can be offered in Convention; but, no amendment can be offered which has not been decided in Committee of the Whole. The contrary rule prevails in the House of Representatives. The Chair would be glad if the House should decide this matter, but in the absence of any instructions, it will adopt the Assembly practice.

Mr. GREELEY—There is now on the table a resolution which I offered and which was referred to the committee to correct the rules on that subject. The Chair knows, as I know, that in the House of Representatives every amendment offered in Committee of the Whole, whether it has been adopted or rejected, may be offered again, and a vote demanded thereon in the House. That is a correct rule and a just rule, but I am afraid that it is not our rule, and hence it was that I offered the resolution weeks ago, which was referred to the Committee on Rules.

The PRESIDENT—The Chair understands the rule in the House of Representatives to have a wider scope than as stated by the gentleman.

Mr. SHERMAN—The rule of this Convention, as I understand it, does permit the offering of any amendment in Convention, that shall be germane to the subject, and which has been rejected in Committee of the Whole. It differs in this respect from the practice of the Assembly, and includes in substance the amendment which was proposed by the gentleman from Westchester [Mr. Greeley]. The reason that the Committee on Rules have not reported on the proposition of that gentleman, is because they believe it to be unnecessary, and that what he desires is accomplished by the rule as it now stands.

Mr. CONGER—Will the Chairman of the Committee on Rules [Mr. Sherman] be kind enough to indicate the rule?

Mr. SHERMAN—It is Chapter 9, Rule 23, as follows:

"When a question shall be under consideration, no motion shall be received except as herein specified and motions shall have precedence in the order stated."

And then subdivision 10 is "to amend." There is no distinction in any of the rules between amendments offered in Committee of the Whole and those not so offered; consequently the latter has no privilege over the former.

The PRESIDENT—The Chair will settle the question by proposing the question to the Convention; shall the practice of the House of Representatives in relation to amendments prevail? Those who are in favor of that practice will—

Mr. MURPHY—I would like the President to repeat what the rule of the House of Representatives is.

The PRESIDENT—The Chair understands the practice in the House of Representatives to be to admit of the offering of amendments without regard to the fact whether the amendments have been offered in Committee of the Whole or not. Shall this practice be adopted for the government of this Convention.

The question was then put on the question proposed by the Chair and it was declared carried.

Mr. NELSON—I move to amend the resolution, so that it will provide that in the debate on Tuesday next, no delegate shall speak on any question more than five minutes. This will give gentlemen introducing amendments an opportunity to briefly state the object they have in view in offering the amendment.

Mr. GREELEY—I accept the amendment.

Mr. MERRITT—Do I understand that by the resolution, the consideration of this question in Convention is postponed until Tuesday next?

The PRESIDENT—The Chair does not so understand it. The Secretary will read the resolution as amended.

The SECRETARY proceeded to read the resolution as amended.

Mr. CONGER—I move to lay the resolution on the table.

The question was then put on the motion of Mr. Conger, and it was declared lost.

Mr. ALVORD—I move to further amend the resolution by striking out all after the word "resolved" and inserting in lieu thereof the following, "that the consideration of the report of the Committee on the Right of Suffrage and the qualifications to Hold Office in Committee of the Whole shall terminate on Tuesday next at 12 o'clock M., and that the question on the report of the Committee of the Whole shall be taken without debate."

Mr. E. BROOKS—I suppose that this question, which is now under consideration, will elicit more debate than any other proposition which will be submitted to this Convention. It is more general in its character and more important in its results, and I, therefore, suggest to the mover of the resolution [Mr. Greeley] and to the Convention that some little time, beyond the day named, be given to us for the proper consideration of this subject. Many gentlemen have participated in this discussion over and over again. Some of them have made three, four and even five speeches each, while

others of us, either from inability to obtain the floor or from indisposition to trespass too much upon the time of the Convention, have not spoken at all. I, therefore, suggest that some longer time be granted by the Convention for the discussion of the subject now under consideration. We have already had intimations that the previous question is to be introduced to govern our deliberations, the effort of which would be, not only to cut off all debate, but, if properly construed, as in the House of Representatives, would cut off the opportunity for offering amendments. If it is in order, therefore, or if the amendment of the gentleman from Onondaga [Mr. Alvord] be voted down, I shall ask that debate, on and after to-day, be limited to speeches of from fifteen to twenty minutes each, and that, on Wednesday next, we take the question on a final vote.

Mr. HUTCHINS—I am in favor of giving full latitude in this debate. And if it would accommodate the gentleman who has just taken his seat [Mr. E. Brooks], I would be willing to sit until tomorrow morning. Yesterday evening I think there was a disposition on the part of the Convention to remain in session and listen to the remarks of any gentleman who should wish to occupy the time of the Convention. The gentleman from Richmond [Mr. E. Brooks], had he been present, and in his place, I have no doubt would have been listened to with pleasure for as long a time as he desired. There is no disposition to stifle debate. I do not think the people feel any such disposition; and I am certainly satisfied that members of this Convention do not. But we must have some time fixed when this vote is to be taken that every gentleman may be here to record his vote. It is for that purpose that the gentleman from Onondaga [Mr. Alvord], made his motion and for that purpose alone. I am in favor of afternoon sessions and evening sessions until every gentleman who desires to be heard on this question shall have full opportunity. By the time fixed in the motion the reports of other committees will have been submitted. The report of the Committee on the Right of Suffrage in the Convention of 1846 was some three weeks under consideration before it was adopted. If that is to be a guide for our action, as we have something like twenty-five reports to act upon, we certainly should have something disposed of as we go along. I think no gentleman can justly complain if a vote be taken on Tuesday next.

Mr. M. I. TOWNSEND—I concur entirely with the gentleman who has just taken his seat [Mr. Hutchins] in regard to fixing the time for taking the vote for Tuesday next; but I cannot concur with the gentleman from Westchester [Mr. Greeley] in the idea that all debate on this subject should cease with this day's session. I do not believe that the exigencies of the Convention or the public business requires it. I believe that this is one of the most important questions that can come before this body. This clause of the Constitution is one that should be perfected after profound deliberation, and for that reason I move to strike out from the resolution of the gentleman from Westchester [Mr. Greeley] so much as limits the debate upon this question in Committee of the Whole, to this day.



The **PRESIDENT**—The Chair would inform the gentleman from Rensselaer [Mr. M. I. Townsend] that the motion to strike out is not in order, as long as amendments are proposed. The proposition must first be perfected.

Mr. **RATHBUN**—I apprehend that there is some misapprehension about the amendment offered by the gentleman from Onondaga [Mr. Alvord]. As I understand that amendment, it proposes that debate may continue on this subject until twelve o'clock next Tuesday. I should like to hear it read.

The **SECRETARY** proceeded to read the resolution and the pending amendment of Mr. Alvord.

Mr. **GREELEY**—I will accept that amendment of the gentleman [Mr. Alvord].

Mr. **CASSIDY**—I hope the resolution will not pass. I hope no resolution will pass limiting debate on this question, except some rule which will allow to each member of this Convention a right to be heard for a limited time, and not to repeat his speech. Gentlemen have spoken here upon this subject, presenting their views upon one single and very narrow question, and have presented it in a very narrow, and I may say party point of view, who, having expressed themselves, are now willing to close the debate. I think it unjust and unfair to that large body who have not yet spoken on that subject, and who have manifested no desire to express their opinions and justify them before this committee. If, therefore, we allow to every member fifteen minutes for discussion on this question, and forbid him, as the rule does do, to speak again, we accomplish all that we desire. We will reach this question within a moderate time; we have to-day, we have to-morrow, we have Saturday if we remain here, and if each member is limited in the time taken by him to express his ideas, there will be an opportunity for all to be heard. But some members who have been fully heard ask to cut off debate upon matters of the utmost importance connected with this report. Here is this question of the right of women to vote! It has been refused a hearing in the committee, substantially, and has never had a hearing in this Convention. It has a right to demand a hearing in this Convention, and when it is to be heard, to have its cause advocated through representative men. The eloquent member from Richmond [Mr. Curtis], is prepared for such an advocacy, and I should be sorry to cut him off from the expression of his sentiments, or to cut off other delegates who desire to speak in regard to any other matter. The question of bribery in elections, of the rights of naturalized citizens, of a uniform registry law, are far more important than the question we have already discussed. They do not require elaborate words to be accorded to them, but they do require frank discussion and a fair hearing.

Mr. **GREELEY**—I accept the amendment of the gentleman from Onondaga [Mr. Alvord].

Mr. **VERPLANCK**—We were told last night, and have been told repeatedly, that we should have an opportunity to discuss this proposition in Convention. The proposition of the gentleman from Onondaga [Mr. Alvord] now proposes to cut off all debate, and refuses to the members of the

Convention the poor privilege of even offering amendments in Convention.

The **PRESIDENT**—The Chair would state that as it understands the resolution the gentleman [Mr. Verplanck] is mistaken.

Mr. **VERPLANCK**—Let me see if I am mistaken. The Committee has to report, and the vote of the Convention on that report is immediately to be taken. I ask the Secretary to read the amendment.

The **SECRETARY** proceeded to read the amendment.

Mr. **VERPLANCK**—Now, of what avail is it to a member to offer an amendment, if he cannot debate it—cannot state the object and purposes of the amendment, and if other members cannot discuss the question. This rule deprives us of the power of offering amendments in the Convention, and I trust the Convention will not do so.

Mr. **DEVELIN**—As I understand the resolution read by the Secretary, the vote is to be taken at twelve o'clock next Tuesday, on the report of the Committee. The Committee will not report any amendments which have been offered and rejected in the Committee of the Whole, and the consequence is that those who desire to do so cannot be put on the record on those amendments, because the vote is to be had on the report of the committee, and not on an amendment that may be offered in the Convention. No amendments are possible under that resolution. I understand that the President and the Convention have decided that amendments may be offered in Convention but if this resolution be passed, then the previous decision of the Convention is overruled, and the consequence is that no amendment can be offered in the Convention. Will the Secretary be kind enough to read the latter part of that resolution again?

The **SECRETARY** proceeded to read the resolution as requested.

Mr. **DEVELIN**—"And the question on the report shall be taken without debate." Now, practically, this Convention goes into the Committee of the Whole. The committee decides on a report. The Chairman of the committee reports to the President of the Convention, that the Committee of the Whole has decided upon the report, and he presents it to the Convention, and then the vote will be taken, under this resolution, on that report, and no amendment is possible.

Mr. **ALVORD**—I am inclined to believe that the gentleman from New York [Mr. Develin] is mistaken. The practice has been uniform heretofore, and I take it that the presiding officer of this Convention will so rule now, that when we shall come down to twelve o'clock on Tuesday next, the report of the committee being before the Convention is amendable in every direction. The report may not be agreed to, or the committee may not be discharged, and every proposition can come up before the Convention, as, under the rules of the House of Representatives, every amendment desired to be made by individual members of the Convention will be entertained on the coming in of the report, under the present form and expression of the resolution. It is not the intention, and it never has been the practice, either in the Houses of the Legislature of



this State, or as I understand it, in the House of Representatives, that when a time certain is fixed to take a vote, if any of the incidents surrounding that action have not been entertained in Committee of the Whole, not to entertain those propositions in the body. I trust, therefore, that, with this understanding (and if I am not mistaken, such will be the ruling of the Chair in this case, and must of necessity form a precedent), that the views of the gentleman from New York [Mr. Develin] will not be sustained.

Mr. NELSON—Would we not obviate all questions that might arise by striking out the word "vote" and inserting in the place thereof, "action?"

Mr. GREELEY—I understand the Convention to have just decided that every amendment before the committee, and every other amendment, may be offered, and a vote taken or demanded thereon on the coming in of the report. That, I understand to be a fixed rule of this Convention, on a decision of its President, and ratified by the Convention. I do not see that any new action is necessary. When we say we will proceed to vote thereon, I understand we will vote on every amendment that may have been offered in the Committee of the Whole or may be offered. The only point is, to close debate at that time and proceed to vote; and voting on the report of the committee is voting on every incident of that report. I do not think any change is necessary.

Mr. E. BROOKS—I suppose that the resolution of my friend from Onondaga [Mr. Alvord] means just what it says, and it says that we shall come to a vote upon the report of the committee on Tuesday next at twelve o'clock, and without debate. This is another way of putting the previous question. It refuses the privilege of any amendment by any member of this Convention, and brings us directly to a vote upon the report of the committee, whatever that report may be. Now, Mr. President, to illustrate this, if any gentleman in this Convention desires to introduce an amendment pertinent to the subject under consideration, by the resolution, if it is adopted, he is denied this privilege in the Convention, and the Convention instead of being governed by the general parliamentary law, and the practice in the House of Representatives will necessarily be governed by this resolution because it is the subsequent action of the body. Sir, let me say a word more. The author of this resolution [Mr. Alvord], and my friend from Rensselaer [Mr. M. I. Towusend], who has seconded it with so much earnestness, have occupied a larger time of this body than any other members of this Convention, in the discussion of this very subject; and although, as was said by the gentleman from New York [Mr. Hutchins], I had an opportunity if I had been here last evening, to make any remarks which I might wish to make to this Convention, I wish that gentleman to remember that it is not always convenient to be sitting here seven or eight hours a day; nor is it always agreeable to members of the Convention to listen to discussion extended to that time. I think we have been making pretty rapid progress in the consideration of our business. A large portion of my time is occupied, as gentlemen well know with whom I am associated, in the con-

sideration of important business in the committees of this body. The committees meet at ten o'clock in the morning and at four o'clock in the afternoon and they meet again in the evening. A large portion of time is necessarily occupied in the consideration of business much more important than the debates in which we are engaged. There will be at an early day a period in this Convention when all reports will be submitted and then I shall be willing to sit here as long as any member of the Convention, to act in the consideration of any subject that is presented. But we are engaged in considering the great question which is to come before this Convention whether the right of suffrage shall be extended to the women of this State; whether it shall be extended to the colored people of this State; how far the organic law shall affect the question of bribery; whether the paupers shall be allowed to vote or not; or whether the class of citizens who have filed their application for naturalization previous to thirty days before election in 1865 or 1866, shall enjoy the privilege of the elective franchise or not. All these are important questions which require careful consideration, and in which the people of this State are largely interested; and I submit we are not occupying too much time when we are engaged, as we have been, during only eight days, in the consideration of this question, which is the main one before this body.

Mr. NELSON—I propose the following amendment, strike out the word "vote," and insert in place thereof "action," and at the end add, "and debate by any member be limited to fifteen minutes." As I understand the resolution as it now stands, the effect of my amendment, if adopted, will be, when a report is made to the Convention by Committee of the Whole, the Convention must immediately act upon that report. Then, by the amendment I proposed, the "action" will be any action that is within the rules of this Convention. It may be by amendment, it may be by substitute or by anything else; then debate will be limited, on any amendment or on any substitute, or in reference to any other action, to fifteen minutes to each member. Then will step in the standing rule of the Convention, that a member can speak but once, and the result will be that no member can speak but fifteen minutes, and that will cause but very little delay.

Mr. DEVELIN—I offer as an amendment to the amendment of the gentleman from Dutchess [Mr. Nelson], that after the word "vote" in the report, be inserted "any amendment that may be offered thereto in the Convention."

Mr. NELSON—The word "vote" is not in the resolution. It is the word "action." That covers what the gentleman [Mr. Develin] wishes.

Mr. DEVELIN—I understand the gentleman to say that as he has amended the resolution it covers what I wish.

The SECRETARY proceeded to read the resolution as amended.

Mr. DEVELIN—That covers my idea.

Mr. RATHBUN—I now move that the amendment which I have sent to the Secretary as a substitute for the one offered by the gentleman from Dutchess [Mr. Nelson] be adopted.

Mr. HATCH—I desire to make a sug-

gestion to the gentleman from Westchester [Mr. Greeley]. As I understand the practice of the House of Representatives on any question that has occupied the Committee of the Whole for a number of days the usual practice is when the Committee reports to the House, to limit the debate to five minutes; and I suggest that amendment to the gentleman from Westchester.

The SECRETARY—Proceeded to read the amendment of Mr. Rathbun, as follows:

"Insert after the words 'Committee of the Whole,' last occurring, the words 'and amendments proposed thereto.'"

Mr. SILVESTER—I recognize the fact that this is one of the most important questions that will come before this body, and not wishing that any gentleman should be deprived of the right to express his views, I offer the following amendment and I offer it as a substitute.

The PRESIDENT—As two amendments are already pending, the Chair will inform the gentleman from Columbia [Mr. Silvester] that another amendment is not admissible.

Mr. WEED—I have, personally, no serious objection to the first proposition of the gentleman from Westchester [Mr. Greeley], as it was amended prior to his accepting the amendment offered by the gentleman from Onondaga [Mr. Alvord]; but it seems to me if the Convention will think of it a moment that to adopt the resolution of the gentleman from Onondaga [Mr. Alvord] will be an error for these reasons. In the natural course of events, in the Committee of the Whole the discussion will probably be almost entirely, if not entirely, taken up upon amendments to the first section of the article proposed by the Committee upon Suffrage. I doubt if we get a direct vote upon that subject while in Committee of the Whole. What then will be the result? No discussion of any kind upon the other six sections of the report can be had in Committee of the Whole, because those sections are not under discussion in the Committee, and amendments to them are not pertinent, and discussion upon them not pertinent. Then the report is made to the house on Tuesday next in pursuance of this resolution. That report is that they have made progress and ask leave to sit again. Upon that a motion is made to disagree and a vote is taken upon the original proposition. Perhaps the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] and other gentlemen to the first section can be taken understandingly, at that time; but any other amendment to any other of the six sections of this article cannot be made under the rule as proposed, and no discussion can be had upon them though the other five sections are important. It seems to me, therefore, that if this debate is to be stopped in this way, the first proposition of the gentleman from Westchester [Mr. Greeley] was the proper one, that debate in the Committee of the Whole be ended to-day, or on some time to be fixed; that then we should have time to propose amendments to the other sections of the report, when the whole report would be under consideration in Convention; and any amendment to any portion of them would be in order, and that some limited time should be given for the

discussion of these sections in the Convention. I have no objection to five or ten minutes. I certainly think on Tuesday next it should be limited to five minutes, and it would seem to me if the Convention are determined to end this discussion now, that the proper resolution should be that the discussion in the Committee of the Whole should end to-day or to-morrow, and that the vote be taken on Tuesday next, at one o'clock or at twelve o'clock upon the report, and propositions under it, and that on Tuesday the remarks upon any amendment should be limited to five minutes. This would bring the whole matter up, and give us an opportunity to examine some of the other sections, propose amendments to them, and briefly state the reason of those amendments.

Mr. HUTCHINS—When that occasion arises, when the contingency has happened, the Convention can take care of it. The majority vote fixes the time for taking the vote; the majority can allow us to listen to the eloquence of the gentleman from Clinton [Mr. Weed], if he has not been able to offer his amendment to some one of the proposed sections, and I shall most willingly vote for it. It now requires a majority vote to fix the time, and if any gentleman wishes at the time so fixed to be heard, and the Convention deems it important, he shall be heard; or if the question requires discussion, a majority vote, I have no doubt, will be given to allow it. The gentleman from Richmond [Mr. E. Brooks] says this proposition is, in effect, the previous question. When we had before the Convention, the question whether the rule providing for the previous question, as reported by the committee, should be struck out or not, I voted for retaining it. The gentleman from Richmond [Mr. E. Brooks] voted against it. I am inclined to think that he was right, and that I was wrong. But it was stated at that time, that the way we could reach, in substance, the previous question was by fixing a definite time when the vote could be taken upon the propositions before the Convention. We propose to do that now. If the time limited is not long enough, then, next Tuesday, when the vote is to be taken, we can by vote extend it; but I desire to see the time fixed now, and if the contingency arises, for any reason whatever, that at the time fixed to take the vote it shall not be deemed proper to do so, I would most heartily vote for further postponement.

Mr. DEVELIN—As I understand parliamentary law, if we pass this resolution it stands upon our records that the vote is to be taken at two o'clock on Tuesday, and no majority can change that resolution. In order to change it, a motion must be made to reconsider, and that motion must lie over for a day, and thus of course the attempt to extend debate is defeated.

Mr. TAPPEN offered the following resolution:

*Resolved*, That debate in Committee of the Whole on the report of the Committee on the Right of Suffrage, be closed on Tuesday next, and that the Convention will take action thereon and upon any amendments on Wednesday, after the reading of the journal. Debate to be limited to ten minutes on Tuesday and Wednesday upon the subject then pending.

The PRESIDENT — The Chair is of opinion that the resolution is not now in order there being already two amendments pending.

Mr. TAPPEN — There are conflicting views of members in respect to the time and the day upon which to close the debate on this subject: but it seems to be the sentiment of the majority of the Convention that some specific time ought to be named, and judging from the sentiments expressed upon this subject I gather that early in the ensuing week is the time the majority would like the best, and I propose by this resolution to adopt the features of the various propositions offered and to close this debate on Tuesday next, and on Wednesday, without fixing any hour upon either day at which the Convention shall adjourn, that we take the final vote on all the propositions in that report. I think this resolution will commend itself to the judgment of all the members of the Convention.

Mr. GREELEY — I will accept that amendment, though I think it is totally unnecessary.

The PRESIDENT announced the question to be upon the amendment offered by Mr. Nelson.

Mr. NELSON — I propose to change the time mentioned in that amendment from fifteen minutes to ten minutes.

No objection being made the amendment was so modified.

Mr. HATCH — I offer, sir, an amendment to the amendment to change the time to five minutes; which is the usual time in the House of Representatives.

Mr. SMITH — This Convention, as I understand it, have already decided that any amendment may be offered in Convention, whether it has been previously offered in the Committee of the Whole or not. But as I understand this amendment it proposes to cut off debate in the Convention. Virtually it destroys and nullifies the right which the Convention have voted to retain, because it is well known that the change of a single word, may entirely change the whole scope and effect of a provision, and when it is read by the Secretary in the hurry of business, it is impossible for gentlemen to tell the effect of an amendment thus offered. Therefore, if there be no privilege left to make any explanation at the time, we virtually vote to cut off all debate and permit ourselves only to vote on the original proposition.

Mr. GREELEY — I understand the gentleman from Dutchess [Mr. Nelson] is willing to accept the amendment of the gentleman from Erie [Mr. Hatch] to limit the debate to five minutes, and I am willing to accept the amendment as thus amended.

Mr. McDONALD offered the following amendment.

Add at end of resolution, "Provided further that on and after Friday next no member shall occupy more than fifteen minutes on any one question, unless by a vote of two-thirds of the members present, such member be allowed further time."

Mr. ALVORD — I rise to a question of order, that this proposition of the gentleman from Ontario [Mr. McDonald], is not germane to this subject, and does not come under the rule we have discussed in regard to the order of business.

The PRESIDENT — The Chair is of opinion that the point of order is well taken.

Mr. TAPPEN — I had the honor a few moments ago to offer a resolution which seemed to me to meet with some favor from the Convention; but at the time the Chair decided that it was not in order, because several amendments were pending. I understand that since then these amendments have been disposed of, and I would ask if my resolution is now in order.

The PRESIDENT — The amendment is now in order.

Mr. McDONALD — Although it may be not strictly in order, I would like to ask a question—if it is in order to make a motion with regard to the debate on Tuesday next, why is it not in order to make a motion with regard to debate on Friday next.

The PRESIDENT — The Chair does not consider it his province to inform the gentleman [Mr. McDonald] on points which are not distinctly before the Convention.

Mr. TILDEN — I have no desire to protract the discussion upon the question of suffrage beyond a reasonable limit, and much beyond the limit to which gentlemen have already gone; and the best testimony I can give on that subject is, that I have taken none of the time of the committee in that discussion. It has been somewhat prolonged on a single question and one question only—the question of the suffrage of colored persons. I understand there are gentlemen here, and one of them a man of distinguished eloquence, who proposes to discuss the question of the extension of suffrage to females. I do not myself intend to take any part in that discussion, certainly not beyond a mere expression of opinion that may govern my vote. But, sir, in framing the fundamental law of the greatest State in the Union, of a state larger numerically than were the whole United States when the Convention of 1787 sat, in regard to what is fundamental in government, that is if anything be fundamental, the question of suffrage, and who shall constitute the electoral body; I am desirous that there shall be every reasonable opportunity to make practical amendments in committee that the case requires. I desire myself, sir, to propose several amendments in the Convention when the ayes and noes can be taken, and when, doubtless, there will be a fuller attendance of members. I think it entirely impracticable to state the reasons for an amendment within five or ten minutes, or always within fifteen. It may be very well to draw these discussions in the Committee of the Whole to a close, or it may be very well to limit, if gentlemen desire it, the length of speeches made upon the general subject, but I certainly think it would be improvident and unwise to say that no man shall occupy over five minutes or ten minutes in explaining amendments which are to be voted upon by this Convention. Sir, the analogy of the House of Representatives does not hold good here. Those are mere amendments of detail and form. In several respects, I think this report needs amending—and in material respects. I think, on the whole, without having been intended to be such, it is a disfranchising report, and I think that if the whole time is occupied in Com-



mittee of the Whole in the discussion of the question now pending, and we are forced upon the final action, we ought to have, certainly, longer than five or ten minutes in which to propose amendments that are to take effect and that are to be approved, and which are to constitute the real business we are to do in this body. I think, perhaps, from having allowed too large a latitude, there is danger of our rushing into the other extreme, and tying this body up in such a way that we cannot wisely and discreetly do the actual business part of the duty we are undertaking. I therefore shall vote against these limitations in the Convention, although, perhaps, a larger limitation I would agree to:

Mr. HUTCHINS—One word in reply to the gentleman who has just spoken [Mr. Tilden]. The only argument, as I understand, that he uses in favor of extending the time is this. That he desires in Convention to offer amendments. Now I ask the gentleman why he will not offer these amendments in Committee of the Whole, when he can talk as long as he chooses, and then he will not be precluded when we go into Convention from offering amendments.

Mr. TILDEN—I will answer my friend and colleague. I stated the nature of the limitation on both to show that there might be no power to do precisely what the gentleman proposes.

Mr. HUTCHINS—I understood the gentleman to say that he had his amendments already prepared.

Mr. TILDEN—Not at all. I said nothing of the kind.

Mr. KERNAN—We have sat in Committee of the Whole for nearly two weeks, and it has not for one moment been in order to offer amendments, though it may be so at the end of the session.

Mr. TILDEN—Yes sir, it has been out of order all the time. I intend to offer my amendments in the committee, but I may not have an opportunity under these rules.

Mr. HUTCHINS—Then I would be in favor of a session, even if we have a continuous one of forty-eight hours, long enough to give the gentleman an opportunity. If we do not do something of this kind we shall never be able to accomplish this business. Look at the unreasonableness of the gentlemen who ask for a further extension of time. If I understand the argument of those who oppose this proposition, gentlemen say that they consider this right of suffrage as a sort of secondary thing to be submitted separately to the people, and of very little consequence. My friend from Rensselaer [Mr. Seymour] on Saturday made a most able speech here, showing how much more important many other questions were, that will come before this Convention than the one we are now discussing; but now, they think it is the great question of all others that ought to be discussed. I agree with the gentleman that it is, and I am in favor of giving them full time and full latitude, and of giving every gentleman on this floor full opportunity to speak. But I think if we give them until next Tuesday or Wednesday, and have afternoon sessions if necessary, and evening sessions of sufficient length until all the gentlemen can be heard, it will be sufficient, and although it is the greatest question and the most momentous one

before the Convention, still there are other questions of importance which ought to be fully discussed and heard, and it is for that reason I am in favor of the resolution.

Mr. CONGER—I suppose in the first instance, whatever the action of the Convention may be on any proposition now submitted, that when the vote is taken and the action determined, that the Convention binds itself by a special rule, which it cannot revoke in any contingency unless the majority who enacted the rule shall see fit to grant a reconsideration; so that for all practical purposes, the vote which is to be taken now, is just as final as if Tuesday next had arrived. If then, the majority who are present wish to have this debate closed, I have no objection provided there is ample opportunity afforded to every gentleman who wishes either to propose amendments or to support amendments, to give suitable expression to his views. The gentlemen who have proposed these amendments should be sufficiently explicit in giving us to understand what sort of sessions they propose. Because it is very clear, if a vote is taken on this proposition affirmatively, and if to-morrow we should adjourn over until Monday evening at seven o'clock, it would shut out all further consideration of the question in Committee of the Whole. I do not suppose that any gentleman here, who is ready to limit the debate to a day certain, would wish to take so ungenerous an advantage. But it is due to justice and fairness, by every member of this Convention to himself, that in fixing such a rule it should be so clearly and distinctly stated that there can be no possible advantage taken in any event. In order that there may be no mistake about it I offer the following amendment.

*Resolved*, That the consideration of the report of the Committee on the Right of Suffrage, and the Qualifications to Hold Office in the Committee of the Whole, be continued in regular session, and at recesses to be held every day, without adjournment of the Convention beyond one day, except from Saturday to Monday next, the debate to be closed in Committee of the Whole on Tuesday next at 12 M., and that action then be had upon the report of the committee and upon all amendments proposed, and to be proposed thereto.

Mr. CHAMPLAIN—I rise with the view simply of making an inquiry. It has been stated here by the gentleman from New York [Mr. Hutchins], and also by the gentleman from Rockland [Mr. Conger], that this order of business as established by the resolutions can be changed by a majority vote. Rule 18 reads as follows: "Any particular report or other matter on the general orders may be made a special order from any particular day or from day to day, with the assent of two-thirds of the members voting; and no special order shall be postponed or rescinded except by a similar vote." I have always understood, although I am not very familiar with parliamentary law, that when an hour or day was fixed for taking a vote on a pending proposition it superseded all other business and was a special order. If so, under this rule it would require a two-thirds vote either to establish or rescind it.

Mr. A. J. PARKER—I do not believe we are at this time to decide when these debates shall be



held; I believe we shall gain time and get along better with the business of the Convention by letting this lie over to another day; I therefore move that this resolution lie upon the table.

The question was then put upon the motion of Mr. A. J. Parker, and declared to be carried.

Mr. DEVELLIN moved to take up the motion to reconsider the vote by which the resolution appointing a committee to consider the expediency of adjourning to Saratoga or New York was indefinitely postponed.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That a committee of one from each judicial district be appointed by the Chair to inquire and report upon the expediency of adjourning this Convention to Saratoga or the city of New York.

Mr. OPDYKE—It seems to me that the resolution is a very proper one. It is known that the framers of the law under which we assemble, with a proper consideration for the health and comfort of the members of this Convention, gave them the option after their first organization, to select the place of holding their sessions. It is known I presume, to every member of the Convention that the proprietors of the Union Hotel at Saratoga tendered us the free use of a building suitable for our purposes and properly fitted up for our accommodation. It seems to me that it is due to the liberality of that offer that this committee be at least appointed to make inquiry and report to this Convention, and if there are found to be no objections to making the change I am free to say that I for one will be in favor of making it. There is no doubt that Saratoga is cooler and more healthful than this city, or any other at which we could meet: they are supplied there with excellent water for general use, and their mineral springs are fountains of health of which we may all partake. I believe that the physical and mental stamina of the members of this Convention would be so far increased by the change that we should be able to hold two sessions with less exhaustion than we can here hold one. But the question of making the change is not now before the Convention; it is a preliminary question of inquiry, and a vote in favor of the committee will not be a vote on the subject to which it refers. I trust from the considerations which I have presented and from courtesy to the liberality of the offer that has been made, that the committee will at least be appointed and permitted to make the inquiry.

Mr. RATHBUN—I hope this vote will not be reconsidered. It seems to me that we could hardly be guilty of a greater impropriety than to take up and consider it and finally to be led away on this excursion up to Saratoga. We were not elected, if I remember right, to visit summer resorts or places of amusement or pleasure; we were elected for the purpose of performing a duty, and the ordinary and the regular place for the performance of that duty is where the conveniences resulting from the library, the departments, the public printing, and the center of travel calls the Convention and the legislative bodies of the State. I should like very much, individually, to

spend a week or two, or a month or two at Saratoga if I had nothing else to do and plenty of money to pay expenses, but I do not believe that it is either proper or right for me to convert a public office and a public duty into a matter of pleasure and enjoyment, as though I had been elected for that instead of labor. Now, sir, if gentlemen were aware of the opinion of the people of the country in regard to this proposition, and if they knew of the result to be produced, the effect upon any Constitution which they might adopt, they would hardly make the proposition to go there, and I am satisfied that no proposition of that kind can be carried in this Convention. Why, sir, it would condemn and defeat any Constitution that could be made in this Convention. The very fact that we deserted the Capitol and ran away upon a visiting and summer excursion, would be in the public judgment of the people in the country—I can't say what it would be in the cities—but in the country it would be that we had ceased to be a delegated Convention for the purpose of making a Constitution and had been converted into an entirely different body. Now, sir, I did not rise to debate the question or say a word about it. I rose for the purpose of making a motion, and that motion is to lay this whole subject upon the table, and upon that I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put upon the motion of Mr. Rathbun, and the Secretary proceeded with the call, and upon Mr. Reynolds' name being called—

Mr. REYNOLDS—Is it in order for me to explain my vote?

The PRESIDENT—The Chair is of the opinion that the gentleman can only ask to be excused and can give his reasons for it. Does the gentleman ask to be excused?

Mr. REYNOLDS—I ask to be excused from voting. When this question was up before, I voted in favor of laying the resolution on the table. It was, as I understood it, for the appointment of a committee to visit Saratoga to inquire into the expediency of adjourning the Convention to that place; the resolution was then postponed, and it subsequently came to my knowledge that the gentleman who moved the resolution had some feeling upon the refusal of the Convention to appoint a committee. After some conversation with him, I felt that perhaps he might be right, and I ought to have voted in favor of granting him a committee, though I am opposed to the proposition for going to Saratoga, and I told him if the vote was reconsidered, I would vote in favor of giving him the committee, so that I vote "no" upon the motion now, though I should vote against the proposition to go to Saratoga if it should come up.

The PRESIDENT—The Chair is of the opinion that the gentleman cannot now vote, without the consent of the Convention. If there is no objection the gentleman can vote.

Objection being made the Secretary proceeded with the call.

Mr. HATCH—I do not understand that the gentleman from Monroe [Mr. Reynolds] has been

excused, if not, he is entitled to vote now unless the Convention shall excuse him.

The PRESIDENT—The Chair holds that the gentleman cannot withdraw his request, without the consent of the Convention.

Mr. HATCH—The Convention has not passed upon the question of excusing him, perhaps the Convention are opposed to excusing him.

The PRESIDENT—The Chair is of the opinion, that the gentleman cannot vote without the consent of the Convention.

Mr. DEVELIN—As I understand it sir, the gentleman from Monroe [Mr. Reynolds], requested that he should be excused from voting, but the Convention has not passed upon that request at all; and he is entitled to vote or else the Convention must refuse him the privilege of voting.

The PRESIDENT—The Chair will put the question upon excusing the gentleman, to the Convention.

The question was then put on excusing Mr. Reynolds and it was declared to be not granted.

The SECRETARY proceed to finish the call, and the motion to lay on the table was declared to be lost by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Axtell, Barker, Barnard, Bell, Bickford, E. A. Brown, Carpenter, Case, Cassidy, Church, Cooke, Corbett, Corning, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ferry, Fowler, Francis, Fuller, Gould, Greeley, Gross, Hadley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Kernan, Kinney, Krum, Lapham, Law, Ludington, Merrill, Merritt, Merwin, Morris, Murphy, Paige, A. J. Parker, C. E. Parker, President, Rathbun, Root, Roy, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Silvester, Smith, Strong, Tilden, M. I. Townsend, Van Campen, Wales, Wickham—67.

*Noes*—Messrs. Alvord, Baker, Ballard, Barto, Beadle, Beckwith, E. Brooks, E. P. Brooks, W. C. Brown, Burrill, Champlain, Cheritree, Chesebro, Clinton, Cochran, Daly, Develin, Eddy, Endress, Field, Flagler, Folger, Frank, Fullerton, Goodrich, Grant, Graves, Hardenburgh, Hatch, Hitchman, Huntington, Jarvis, Ketcham, Landon, Larremore, A. Lawrence, M. H. Lawrence, Livingston, Lowrey, Magee, Masten, Mattice, McDonald, Monell, More, Nelson, Opdyke, Pond, Prindle, Prosser, Reynolds, Robertson, Rogers, Rolfe, A. D. Russell, Seymour, Sheldon, Sherman, Stratton, Tappen, S. Townsend, Tucker, Van Cott, Veeder, Verplanck, Wakeman, Weed, Williams, Young—69.

The PRESIDENT announced the question to be on the motion to reconsider the vote by which the original resolution was postponed.

Mr. MERRITT—I do not desire to make any extended remarks, but as I had the honor of making the motion for indefinite postponement, I desire to state, that it was not with any purpose of showing any discourtesy to the gentleman who moved the resolution. It is very clear to me that this Convention, may as well understand now, and determine whether they wish to change the seat of this Convention from Albany to Saratoga. We do not need a committee to inform us of the facilities at Saratoga for holding sessions, or of the convenience which we shall experience if we change the location of the Convention to Saratoga,

for by the newspapers, and by circulars we have been informed of the facilities that exist at that place. Why then appoint this committee?

Mr. DEVELIN—I rise to a point of order, that on a motion to reconsider, the gentleman cannot discuss the merits of the resolution.

The PRESIDENT—The gentleman will proceed in order.

Mr. MERRITT—I say I am not willing, in the case of people who may be interested in this change, in a pecuniary way or otherwise, that they should have the advantage of a report from a committee of this body—

Mr. DEVELIN—I rise to a point of order. The gentleman is pursuing the same course.

The PRESIDENT—The Chair understands the gentleman to be in order.

Mr. MERRITT—I think that in voting to raise this committee, we are voting practically upon the resolution itself, and there can be no courtesy or discourtesy about it. This has been considered and discussed somewhat in the early part of the session, and we were told that we were going to suffer great inconvenience by staying here, that our health would be endangered, but that prophecy has not been fulfilled yet, and we have suffered no inconvenience whatever from the temperature. It has undoubtedly been observed by those who have taken an interest in the degrees of temperature during the heated term, that there is no material difference between Albany, Saratoga, Ogdensburgh and Montreal, so that in that respect it will make but very little difference. It is possible there may be some surroundings about Saratoga which may make it more pleasant and agreeable for gentlemen of the Convention, but I am clearly of the opinion, if we change from Albany to Saratoga, that the inconvenience of getting there, attending sessions and procuring the proper printing, and the difficulty of getting information we may seek from the departments at Albany, and the State library, will overbalance any benefit which may be derived from the change. I have heard no complaint from any gentlemen on this floor, so far, of any inconvenience; we are all well located here, and I think it is hardly worth while to go to Saratoga. I do not suppose that any considerable number would even think of going to the city of New York, for, as I understand it, even a majority of the delegates from New York city are desirous to go to Saratoga and not to New York city, and I do not suppose the amendment was seriously entertained, as I judge from the remarks of the gentleman who offered it [Mr. Develin], he himself is in favor of going to Saratoga, and it is natural that the residents of New York should desire to go to these watering places—

Mr. BARKER—Can the gentleman inform the Convention when the races will begin at Saratoga?

Mr. MERRITT—I shall leave that to those who desire to go there. I repeat again, there can be only one or two purposes in this resolution. One is to raise a committee for the purpose of reporting on the condition of things at Saratoga. Of course that would be a good advertisement, but I am opposed to making that advertisement an official document of this Convention. If

I supposed that a majority of this Convention seriously entertained the idea of going to Saratoga, and really desired to get information, as to whether we could sit there more profitably, and shorten the session of this Convention, I should treat it in a different light, but I believe a majority of the Convention are opposed to going away from Albany and from our duty. One-half of what we call the heated term is already gone, and in a few weeks more we shall come to September, and then we shall suffer no inconvenience. I hope the vote will be taken on the merits of the question, and we shall allow no question of courtesy or discourtesy to come in.

Mr. TAPPEN—There are reasons why this motion should be reconsidered, and the chief reason is that the Convention may come to a direct vote on the question. There are also other reasons, why it should be reconsidered. If I remember right the history of Saratoga, it is classic ground, it is the site of great revolutionary struggles. More than that, it is the seat of learning, and it is the resort for the intellect, the wealth and the society of the State during this present season. It is a place where this Convention would have an admiring and appreciative audience at all times; it is a place where we shall meet the men of this State, who, because of their renown and intellect, are the gentlemen with whom the members of this Convention may desire to consult upon the subject of their deliberations. By voting to raise this committee, we do not decide, that we will go to Saratoga, but we merely give the gentlemen who contend, that this removal is most advantageous, an opportunity of reporting on that subject. One of the most eminent members of this Convention, says that New York would be the proper place to close the labors of this Convention, late in the season and perhaps he is right. I am not going to say that Albany is not the proper place to commence our labors, where we can get all our documents and papers, and Saratoga is the place to study them. I think, sir, we might do twice as much labor in one day in that place as we have done yet in our daily sessions in the city of Albany. Beside, sir, I am informed that Gen. Grant is to be there, and as he is to be the next President of the United States, it is eminently fit and proper for this Convention to go there. I can conceive of no stronger argument for the political majority, that I am aware of at the present time. The atmosphere and the conveniences of that place are particularly favorable to studying and to the performance of the peculiar duties this Convention has met to perform. I trust that the advocates of this removal will be allowed a fair chance by their committee to have this subject favorably reported on. In regard to the proposed house up there, I can say to the Convention from actual observation for the period of a few hours, I am inclined to think it will answer.

Mr. SILVESTER—Without intending to be discourteous at all to the gentleman who introduced this resolution, I think that the consideration or adoption of it will be inexpedient, and the first reason that suggests itself to my mind, is the question which was asked by the gentleman from Chautauque [Mr. Barker], as to when the races were

to take place at Saratoga. We have been discussing the question of races for several days, and I think if we have an adjournment to Saratoga it may involve a second consideration of races, and this may indefinitely prolong the sessions of the Convention. And again, I think it is inexpedient, because time will inevitably be wasted in preparing suitably for the sessions of this Convention at any building in Saratoga which may be large enough for our reception. I admit all that has been said by the gentleman from New York [Mr. Develin] with respect to the public spirit of persons in Saratoga, who have offered the use of the Opera House there for the sessions of the Convention. But I believe, with all due deference to their public spiritedness, that the building would not be equally adapted to the sessions of this Convention and for the transaction of its business as the Capitol. We have here all the facilities for conducting our business, and there it would take some time to arrange the building so that business could be properly carried on. Again, sir, I think it is inexpedient that this Convention should become a migratory body. I think the question should be settled whether we are to be a traveling organization, or whether we are to be considered a body occupied in discussing constitutional questions, and framing a Constitution for the State. What will become of our reputation among the people of the State who have chosen us to transact this important business, if we authorize a committee to consider the propriety of adjourning to Saratoga. They will consider that we are more devoted to our own comfort, and to considering questions of pleasure excursions throughout the State, than for the transaction of the important business with which they have intrusted us. I hope this Convention will not render itself liable to the imputation of becoming a migratory body. But, sir, if this resolution is to be adopted, and this Convention is to be carried about for the observation and for the satisfaction of the people of the State, to be exhibited to them, I am not willing that it should be confined to Saratoga and New York. I wish the inhabitants of the western part of the State—of Niagara Falls—should have the opportunity of seeing this Convention. I wish the inhabitants of the sea coast to have the opportunity, and the inhabitants of my own county, and I propose that we also go to Lebanon Springs. If this body is to become a traveling organization I think it should be exhibited to the people of every part of the State of New York. And I wish that my own constituents of the county of Columbia should also have an opportunity of observing the deliberations of so distinguished a body as the Constitutional Convention of the State of New York.

Mr. KETCHAM—I was a little surprised, sir, the other day, at the motion to postpone this resolution. It seemed to me that common courtesy to the gentlemen from Saratoga, who have so liberally offered the Convention the use of a building there, demanded we should appoint a committee. No man who views the proposed room there, can fail to see that it is better adapted to the business of this Convention, than this room. And there are other rea-



sons and considerations besides the one of courtesy, which it seems to me should have prompted this Convention to appoint the committee. Those of us who were in the habit of seeing and hearing persons who have been in former legislatures, recollect their almost daily complaint of the internal inconvenience of this room. That there were no Committee rooms and they could not make any, that it was incomplete, dark and unhealthy; and later members of the Assembly assert it to be indispensable that some better accommodations should be provided for one hundred and twenty-eight men, as sitting in this room during the cool and bracing air of mid winter subjected members to disease and danger consequent upon their daily meetings here. It seems to me, sir, for that reason we should gladly avail ourselves of an opportunity of appointing a committee to ascertain whether the conveniences of meeting at Saratoga are not greater and better than here. From personal observation I am satisfied they are. From personal observation I know we may have a room there much more eligible than this one for the use of the Convention, we can have surrounding committee rooms, and the proprietor of the Opera House offers to prepare it for our daily sessions at any time, on two days' notice, with desks and all. With regard to the idea, that we shall bring ourselves into disrepute, and endanger the adoption of any Constitution we may make, by the people. I have too much faith in the good sense of my constituents to believe they would reject a Constitution because of the particular place where it was adopted. I think they have too much good common sense to reject any Constitution that I helped to frame while I was enjoying good health. If I thought they would reject a Constitution because I did not sacrifice my health in framing it, I would go home and stay there. I have no fears, sir, that the Constitution will be rejected, because it shall happen to be adopted in Saratoga instead of the city of Albany.

Mr. POND—It seems to me that the gentlemen who oppose this motion to reconsider, in some respects answer each other. The gentleman from St. Lawrence [Mr. Merritt], suggests that there is no necessity for the appointment of a committee such as is contemplated by the resolution, the reconsideration of which has been moved. He says that the Convention must know all the circumstances bearing upon the question, because the newspapers have contained the information. Well, sir, I know that whatever a man finds in the newspapers must be true; and in that respect I agree with the gentleman from St. Lawrence [Mr. Merritt]. But there are a great many members of this Convention who think that sometimes statements get into the newspapers that are not entirely true. They probably labor under error, and the gentleman from St. Lawrence is entirely correct, that whatever is published in newspapers is correct and safe, so that the Convention may rely upon it and base its action thereupon. But there are several gentlemen not so intelligent as the gentleman from St. Lawrence [Mr. Merritt] who have not relied upon what they found in the newspapers, and do not think it entirely reliable.

Mr. MERRITT—I intended by my remarks to intimate that whatever has been said in the papers is very favorable to Saratoga. It was put forth in their interests, and the proprietor of one of the hotels forwarded a circular to many members of this Convention, setting forth the reasons why we should go to Saratoga.

Mr. POND—I did not misunderstand the gentleman. I know very well the newspapers have represented this proposition, and have represented it favorably, but I was not aware until it was announced by the gentleman from St. Lawrence [Mr. Merritt] that that was a sufficient basis upon which this Convention should act. On the contrary, I supposed that they would be acting a little more like a menagerie if they should adopt the suggestion of the gentleman from St. Lawrence [Mr. Merritt], and base official action upon what they saw in the newspapers, and on a private communication from one of the hotel owners in Saratoga, sent to several members of this Convention. Although, sir, I may happen to know that the reasons given in the newspapers are true; although I may happen to know that the statement of the proprietor of the hotel is correct; I sir, for one, think it would be entirely improper for the members of this Convention, or the Convention itself to act upon that suggestion and go to Saratoga. The gentleman from Columbia [Mr. Silvester] answered the gentleman from St. Lawrence [Mr. Merritt]; he says, notwithstanding the truthful statement of newspapers in this regard, and notwithstanding what this private circular may have stated to the members of this Convention, there is no place in Saratoga fit for the meeting of this Convention. Very well. It may be true as the gentleman from Columbia asserts; or it may be true as the newspapers have asserted; but what is the proper mode of ascertaining these facts by a Convention of gentlemen such as are assembled here? Why, the legitimate mode and proper mode is by the appointment of a committee; and I would not ask the gentlemen of this Convention to act upon any statement of mine in regard to the facilities which Saratoga has for facilitating the business of this Convention. I have not the assurance to do it.

Mr. MERRITT—I would like to ask the gentleman [Mr. Pond] whether he has suffered any inconvenience here, except coming to this place—or whether the public business up to the present time has suffered in any way in consequence of holding our sessions in this Capitol.

Mr. POND—No, sir; I can answer the gentleman [Mr. Merritt] by saying that I have not been incommoded because I have adjourned to Saratoga every night since the sessions of this Convention have commenced, and therefore, I have had a partial advantage of gentlemen who have remained here. I have been informed that the water in Albany is bad; I can assure the gentleman that the water in Saratoga is very good, and they will find there every variety to satisfy the temperament and constitution of gentlemen here, on both and all sides of the question of race. [Laughter.] I assume, therefore, that upon this subject it is proper, before final action is had, a committee should be appointed; that that is the legitimate, the ordinary and parliamentary way;



notwithstanding the weighty suggestion of my friend from St. Lawrence [Mr. Merritt] who says that because the newspapers have said so and so, we may as well go to Saratoga without waiting for a committee to ascertain the facts. I suppose that the merits of the question upon this motion to reconsider, are not fairly before the Convention. It is enough, in order to have this committee appointed, to know there are many gentlemen in this Convention who are favorable to this proposition, without any considerations of "respect for the gentleman from Saratoga," requiring the appointment of this Committee. If it be ascertained, as I am informed it has been ascertained, by the votes taken on the original proposition and by the votes taken on the motion to lay upon the table, that there are a large number of the members of this Convention who are favorable to this proposition, I say then it is proper, without ridicule, without converting the members of this Convention into a "traveling menagerie," to appoint a committee in order to inquire into this question and make a report, and when the report has come in, our final action may be based upon it. Some gentleman has suggested that if we appoint this committee to inquire into the expediency of our going to Saratoga—if we receive a favorable report from that committee, and it is adopted, there will be danger that the people will mistake this body for a "traveling menagerie." So far as the suggestion of the gentleman is concerned, perhaps it is not right to say that the people have not a right to give this body what character they choose; but I am not afraid, for one, that any member of this Convention will be taken for an animal belonging to a menagerie, unless the evidence of the sense of sight forces gentlemen to come to that conclusion; and for one, I do not apprehend that any member will be in danger of any such conclusion being drawn. I do not think, Mr. President, that the manner in which this proposition has been treated is a fair one. The Legislature when they passed this law, evidently had in view this very proposition. They did not deem it desirable to the Convention nor to the people of the State which they represent, to put into the law a section or clause authorizing this specific thing. They did not anticipate the manner in which this proposition would be attempted to be defeated. They did not think of putting a clause into the law giving this Convention power to go to Saratoga. There have been a great many questions before the Convention as I have already said—

Mr. VAN CAMPEN — Will the gentleman [Mr. Pond] give way for a moment, while I correct him.

Mr. POND — Certainly.

Mr. VAN CAMPEN — The law provides as distinctly as possible against our going away from here. It says that "after the said Convention has met and organized, it shall have power to adjourn to and hold its meetings at any other place than the Assembly Chamber at the Capitol."

Mr. POND—I understand some learned gentlemen have looked over that statute, and that they find it prohibits the very thing it manifestly authorizes. I do not pay much attention to the

dotting of "i's" and the crossing of "t's." It is manifest to every one who reads the law that it was placed there to allow the Convention to adjourn to another point elsewhere, and it is not common sense upon any other hypothesis or construction. It being there originally, and contemplating that a contingency might arise when it was proper for this Convention to go to Saratoga, and it being evidently the opinion of a large number of the members of this Convention that our sessions might be held there profitably to the health of the members of the Convention, and profitably to the Constitution which it is proposed to frame here, and thinking also that the sessions there will facilitate the business of this Convention—

Mr. MERRITT—I think the gentleman misrepresents the intent of the Legislature, for the reason that they provided for fitting up this chamber for the use of the Convention. Secondly, they provided that Congress Hall should not be removed until after the sessions of this Convention. They expected its sessions would be held here; but it was thought at the time that perhaps Tweddle Hall or some other room in this city would be more convenient to the members, and I know with that view some of the State officers took into consideration the propriety of renting Tweddle Hall for the sittings of this Convention, and after an examination they thought that this Chamber would answer all the conditions required. Whatever construction may be put on the law we should hold our sessions in this city and not out of it.

Mr. POND—I understand that the gentleman [Mr. Merritt], holds a public office here, and it will be convenient for him to remain here. When the Convention goes up to Saratoga we will let him come back and stay in Albany if he desires it. Mr. President, I will draw my remarks to a close after a while if I am permitted to. I say that it being manifest that the law was intended to allow the sessions of the Convention to be held at Saratoga or elsewhere, and it being deemed expedient by the Convention or by a large number of its members to hold a session there, it is but right and proper, without raising any question of courtesy, that the suggestions of those gentlemen be answered, by the appointment of a committee to examine into what way these very questions that have been suggested by gentlemen whether Saratoga Springs furnishes a good place for the sittings of this Convention, where the business may be facilitated, and where the health of the members may be consulted better than here, and also where the business of this Convention may be better performed than at this place.

Mr. DUGANNE—I yield to no man upon the floor of this Convention in desiring to extend proper courtesy on proper occasions to every delegate here; but I apprehend that courtesy and respect are also due to the people of this State, who sent us here to perform our business as business men, and not to be diverted from our duty by any temptations which are unworthy of business men. If I did not look upon this whole matter of the movement to adjourn to Saratoga, in a more serious light than some of the gentlemen appear to do, I should stigmatize it as a farce, and beneath

the dignity of delegates to this Convention; but, unfortunately, without impugning the motives of any of the gentlemen here, I am constrained to look upon it as a Trojan horse, introduced into the Convention for the purpose of destroying it. It looks as if there was an inclination to belittle this Convention by belittling its action. I trust that the whole subject will now be deferred indefinitely, or until such time when we shall dispose of the true business of this Convention. We have wasted already this morning as we have wasted many mornings before, in unproductive discussion. Therefore, I now move that this entire subject be postponed until the 1st of September.

Mr. HALE—The first day of September is Sunday. Will the gentleman [Mr. Duganne] change the date.

Mr. DUGANNE—Yes, sir, I will make it Monday the 2nd of September.

The question was then put on the motion of Mr. Duganne, and it was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Axtell, Barker, Barnard, Bell, Bickford, E. A. Brown, Carpenter, Case, Cassidy, Church, Cooke, Corbett, Corning, Curtis, Duganne, C. O. Dwight, T. W. Dwight, Ferry, Fowler, Francis, Fuller, Gould, Greeley, Gross, Hadley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Kernan, Kinney, Krum, Lapham, Law, Ludington, McDonald, Merrill, Merritt, Merwin, Morris, Murphy, Paige, A. J. Parker, C. E. Parker, President, Rathbun, Root, Roy, Rumsey, L. W. Russell, Schell, Schoonmaker, Seaver, Silvester, Smith, Strong, M. I. Townsend, Van Campen, Wales, Wickham—67.

*Noes*—Messrs. Alvord, Baker, Ballard, Barto, Beadle, Beckwith, E. Brooks, E. P. Brooks, W. C. Brown, Burrill, Champlain, Cheritree, Chesebro, Clinton, Cochran, Daly, Develin, Eddy, Endress, Field, Folger, Frank, Fullerton, Grant, Graves, Hardenburgh, Hatch, Hitchman, Huntington, Jarvis, Ketcham, Landon, Larremore, A. Lawrence, M. H. Lawrence, Livingston, Lowrey, Magee, Masten, Mattice, Monell, More, Nelson, Opdyke, Pond, Prosser, Reynolds, Robertson, Rogers, Rolfe, A. D. Russell, Schumaker, Sheldon, Sherman, Stratton, Tappen, S. Townsend, Tucker, Van Cott, Veeder, Verplanck, Wakeman, Weed, Williams, Young—65.

Mr. BARNARD offered the following resolution:

*Resolved*. That this Convention this day will take a recess from 2 o'clock, P. M., to 4 o'clock, P. M.

The question was put on the resolution of Mr. Barnard, and it was declared adopted.

Mr. HALE offered the following resolution, and asked that it be laid upon the table:

*Resolved*. That a committee of seven be appointed by the Chair to consider and report upon the mode of submission to the people, of the amendments to the constitution that may be proposed by the Convention, to report after the reports of all the standing committees shall have been received and acted on. And that all resolutions and motions upon the subject of submission be referred to such committee.

Which was laid on the table.

Mr. DUGANNE offered the following resolution:

*Resolved*, That it is the sense of this Convention that persons of African descent residing in the State of New York, are entitled to the same rights and immunities claimed by persons of European descent.

Which was laid on the table.

Mr. HITCHMAN offered the following resolution:

*Resolved*, That the Tax Commissioners of the city of New York be instructed to report to this Convention, the value, in their judgment, of the real estate, in use in that city, by the various religious denominations, for the purpose of public worship; together with the assessed valuation of the same as returned to them, or the officers preceding them, charged with the duties they now perform, from the year 1847 up to the year when such property or real estate was exempted from taxation by Legislative enactment.

Which was laid over under the rule.

Mr. CURTIS called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Commissioners of the Land Office be requested to communicate to this Convention their proceedings under chapter 481 of the Laws of 1866, authorizing the sale of lands donated to this State by the United States.

The question was put on the resolution of Mr. Curtis, and it was declared adopted.

Mr. TAPPEN offered the following resolution:

*Resolved*, That the people of this State are entitled to vote upon the question, "Shall the elective franchise be extended to men of color without a property qualification?" as a separate proposition; and that this Convention, with a proper regard for the rights and interests of the people, will submit such question to them, independent of the other provisions amendatory of the Constitution.

Mr. RATHBUN—Mr. Chairman—

The PRESIDENT—The question giving rise to debate, it will lie over under the rule.

Mr. TAPPEN—I rise to a question of order—

Mr. RATHBUN—I believe I have the floor. I move to lay the resolution on the table.

Mr. VEEDER—I call for the ayes and noes.

Mr. ALVORD—I rise to a point of order. The simple rising of a gentleman to propose a disposition of a resolution, carries it over as a matter of course, under the rule.

The PRESIDENT—The Chair so ruled.

Mr. TAPPEN—I propose to raise a question of order upon that very decision. At this late hour when we are about to adjourn there is very little time to debate. There is enough time, however, to state the question of order. During this morning when a resolution similar in effect was offered, bearing upon a question then pending, to wit: the report of the Committee on the Right of Suffrage, I understood the President to hold, that although it was a debatable resolution it did not go over to to-morrow morning, under the second subdivision of Rule 29, it being germane to the subject then before the Convention, or about to be before it.

The PRESIDENT—The Chair will inform the

gentleman from Westchester [Mr. Tappen] that it put its decision on the ground that the resolution related to the business of the day. The Chair does not so understand this resolution of the gentleman.

Mr. TAPPEN — The business which I understood the Chair to intimate, was the business of the day, was the report of the Committee on the Right of Suffrage, which was to be considered in Committee of the Whole.

The PRESIDENT — Does the gentleman from Westchester [Mr. Tappen] appeal from the opinion of the Chair.

Mr. TAPPEN — I do not sir.

Mr. GRAVES — A few days since I presented to the Convention a resolution on the subject of women's rights. That resolution was referred to the Committee of the Whole. Is it in order to call up that resolution for discussion?

The PRESIDENT — The Chair holds it is not.

The PRESIDENT presented a communication from the Auditor of the Canal Department transmitting a report of the number of breaks in the Erie Canal in response to a resolution adopted by the Convention on the 11th inst.

Which was referred to the Committee on Canals and ordered to be printed.

Mr. SCHUMAKER called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Secretary of State report to this Convention the number of leases or grants given by the State or Commissioners of the Land Office, which are still outstanding and unexpired, the names of the lessees or grantees, the rental, and a brief description of such property.

The question was put on the resolution of Mr. Schumaker, and it was declared adopted.

Mr. FOLGER offered the following resolution:

*Resolved*, That after this day, debate in Committee of the Whole and in Convention, upon the report of the Committee upon the Rights of Suffrage, etc., be so confined as that a member may speak but once to any amendment, and but twenty minutes at a time.

The question was then put on the resolution of Mr. Folger, and it was declared adopted.

On motion of Mr. VEEDER the Convention took a recess till 4 o'clock P. M.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock.

The Convention resolved itself into the Committee of the Whole on the report of the Committee on the Right of Suffrage, and the Qualifications to Hold Office; Mr. ALVORD of Onondaga in the Chair.

The Chairman announced the question to be on the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight.]

Mr. CURTIS offered the following amendment:

"In the first section, strike out the word 'male,' and wherever in that section the word 'he' occurs, add 'or she,' and wherever the word 'his' occurs add 'or her.'

Mr. CURTIS — In proposing a change so new to our political practice, but so harmonious with

the spirit and principles of our government, it is only just that I should attempt to show that it is neither repugnant to reason nor hurtful to the State. Yet I confess some embarrassment, for while the essential reason of my proposition seems to me to be clearly defined, the objection to it is vague and shadowy. From the formal opening of the general discussion of the question in this country, by the Convention at Seneca Falls in 1848, down to the present moment, the opposition to the suggestion, so far as I am acquainted with it, has been only the repetition of a traditional prejudice, or the protest of mere sentimentality, and to cope with these is like wrestling with a malaria or arguing with the east wind. I do not know why the committee have changed the phrase male inhabitant or citizen, which is uniformly used in a constitutional clause limiting the elective franchise. Under the circumstances, the word "man" is obscure and undoubtedly includes women as much as the word "mankind." But the intention of the clause is evident and the report of the committee makes it indisputable. Had the committee been willing to say directly what they say indirectly, the eighth line and what follows, would read: "Provided that idiots, lunatics, persons under guardianship, felons, women, and persons convicted of bribery, etc., shall not be entitled to vote." In their report, the committee omit to tell us why they politically class the women of New York with idiots and criminals. They assert merely, that the general enfranchisement of women would be a novelty, which is true of every step of political progress and is therefore a presumption in its favor, and they speak of it in a phrase which is intended to stigmatize it as unwomanly, which is simply an assumption and a prejudice. I wish to know, sir, and I ask in the name of the political justice and consistency of this State, why it is that half of the adult population, as vitally interested in good government as the other half, who own property, manage estates and pay taxes, who discharge all the duties of good citizens and are perfectly intelligent and capable, are absolutely deprived of political power, and classed with lunatics and felons. The boy will become a man and a voter; the lunatic may emerge from the cloud and resume his rights; the idiot, plastic under the tender hand of modern science, may be moulded into the full citizen; the criminal whose hand still drips with the blood of his country and of liberty, may be pardoned and restored. But no age, no wisdom, no peculiar fitness, no public service, no effort, no desire can remove from women this enormous and extraordinary disability. Upon what reasonable grounds does it rest? Upon none whatever. It is contrary to natural justice, to the acknowledged and traditional principles of the American government, and to the most enlightened political philosophy. The absolute exclusion of women from political power in this State is simply usurpation. "In every age and country" says the historian Gibbon, nearly a hundred years ago "the wiser or at least the stronger of the two sexes, has usurped the powers of the State and confined the other to the cares and pleasures of domestic life." The historical fact is that the usurping class, as



Gibbon calls them, have always regulated the position of women by their own theories and convenience. The barbaric Persian, for instance, punished an insult to the woman with death, not because of her but of himself. She was part of him. And the civilized English Blackstone only repeats the barbaric Persian when he says that the wife and husband form but one person—that is the husband. Sir, it would be extremely amusing, if it were not tragical, to trace the consequences of this theory on human society and the unhappy effect upon the progress of civilization of this morbid estimate of the importance of men. Gibbon gives a curious instance of it, and an instance which recalls the spirit of the modern English laws of divorce. There was a temple in Rome to the Goddess who presided over the peace of marriages. "But," says the historian, "Her very name Viriplaca—the appeaser of husbands, shows that repentance and submission were always expected from the wife,"—as if the offense usually came from her. In the "Lawe's resolution of Women's Rights" published in the year 1632, a book which I have not seen, but of which there are copies in the country, the anonymous and quaint author says and with a sly satire: "It is true that man and woman are one person, but understand in what manner. When a small brooke or little river incorporateth with Rhodanus, Humber or the Thames, the poor rivulet looseth her name: it is carried and recarried with the new associate: it beareth no away—it possesseth nothing during coverture. A woman as soon as she is married, is called *covert*: in Latine *nupta*—that is, veiled; as it were overclouded and shadowed; she hath lost her streame. I may more truly farre away, say to a married woman, her new self is her superior; her companion her master. \* \* See here the reason of that which I touched before—that women have no voice in Parliament; they make no laws; they consent to none; they abrogate none. All of them are understood either married or to be married, and their desires are to their husbands."

From this theory of ancient society that woman is absorbed in man, that she is a social inferior and a subordinate part of man, springs the system of laws in regard to woman which in every civilized country is now in course of such rapid modification, and it is this theory which so tenaciously lingers as a traditional prejudice in our political customs. But a State which like New York recognizes the equal individual rights of all its members, declaring that none of them shall be disfranchised unless by the law of the land or the judgment of his peers, and which acknowledges women as property holders and taxable, responsible citizens, has wholly renounced the old Feudal and Pagan theory, and has no right to continue the evil condition which springs from it. The honorable and eloquent gentleman from Onondaga said that he favored every enlargement of the franchise consistent with the safety of the State. Sir, I heartily agree with him, and it was the duty of the committee in proposing to continue the exclusion of women, to show that it is necessary to the welfare and safety of the State that the whole sex shall be disfranchised.

It is in vain for the Committee to say that I ask for an enlargement of the franchise and must therefore show the reason. Sir, I show the reason upon which this franchise itself rests, and which, in its very nature, forbids arbitrary exclusion; and I urge the enfranchisement of women on the ground that whatever political rights men have, women have equally. I have no wish to refine curiously upon the origin of government. If any one insists with the honorable gentleman from Broome that there are no such things as natural political rights and that no man is born a voter, I will not now stop to argue with him, but as I believe the honorable gentleman from Broome is by profession a physician and surgeon, I will suggest to him that if no man is born a voter, so no man is born a man—for every man is born a baby. But he is born with the right of becoming a man without hindrance; and I ask the honorable gentleman, as an American citizen and political philosopher, whether, if every man is not born a voter, he is not born with the right of becoming a voter upon equal terms with other men? What else is the meaning of the phrase which I find in the New York Tribune of Monday, and have so often found there. "The radical basis of government is equal rights for all citizens." There are, as I think, we shall all admit, some kind of natural rights. This summer air that breathes benignant around our national anniversary, is vocal with the traditional eloquence with which those rights were asserted by our fathers. From all the burning words of the time I quote those of Alexander Hamilton, of New York, in reply, as my honorable friend the chairman of the committee will remember, to the tory farmer of Westchester: "The sacred rights of mankind are not to be rummaged for among old parchments or dusty records. They are written as with a sunbeam in the whole volume of human nature by the hand of the Divinity itself, and can never be erased or obscured by mortal power." In the next year, Thomas Jefferson, of Virginia, summed up the political faith of our fathers in the great declaration. Its words vibrate through the history of those days. As the lyre of Amphion raised the walls of the city, so they are the music which sing course after course of the ascending structure of American civilization into its place. Our fathers stood indeed upon technical and legal grounds when the contest with Great Britain began, but as tyranny encroached they rose naturally into the sphere of fundamental truths as into a purer air. Driven by storms beyond sight of land the sailor steers by the stars. Our fathers derived their government from what they called self-evident truths. Despite the brilliant and vehement eloquence of Mr. Choate, they did not deal in glittering generalities, and the Declaration of Independence was not the passionate manifesto of a revolutionary war, but a calm and simple statement of a new political philosophy and practice. The rights which they declared to be unalienable are indeed what are usually called natural, as distinguished from political rights, but they are not limited by sex. A woman has the same right to her life, liberty and property, that a man has, and she has consequently the same right to an equality of protection that he has; and this, as I understand it,



is what is meant by the phrase, the right of suffrage. If I have a natural right to that hand, I have an equal natural right to everything that secures to me its use, provided it does not harm the equal right of another; and if I have a natural right to my life and liberty, I have the same right to everything that protects that life and liberty which any other man enjoys. I should like my honorable friend, the chairman of this committee, to show me any right which God gave him which he also gave to me, for which God gave him a claim to any defense which he has not given to me. And I ask the same question for every woman in this State. Have they less natural right to life, liberty and property, than my honorable friend the chairman of the committee—and is it not, to quote the words of his report, an extremely “defensible theory,” that he cannot justly deprive the least of those women of any protection of those rights which he claims for himself? No, sir, the natural, or what we call civil right and its political defense, go together. This was the impregnable logic of the revolution. Lord Gower sneered in Parliament at the Colonists a century ago as Mr. Robert Lowe sneers at the reformers to-day. “Let the Americans talk about their natural and divine rights.” “I am for enforcing these measures.” Dr. Johnson bellowed across the Atlantic “Taxation, no Tyranny,” James Otis spoke for America for common sense, and for the eternal justice, in saying: “no good reason however can be given in any country, why every man of a sound mind should not have his vote in the election of a representative. If a man has had but little property to protect and defend, yet his life and liberty are things of some importance.” And long before James Otis, Lord Somers said to a Committee of the House of Commons, that the possession of the vote is the only true security which an Englishman has for the possession of his life and property. Every person, then, is born with an equal claim to every kind of protection of his natural rights which any other person enjoys. The practical question therefore is how shall this protection be best attained; and this is the question of government which, according to the Declaration, is established for the security of these rights. The British theory was that they could better be secured by an intelligent few than by the ignorant and passionate multitude. Goldsmith expressed it on singing:

“For just experience shows in every soil,  
That those who think must govern those who toll.”

Nobody denies that the government of the best is the best government, the practical question is how to find the best, and common sense replied:

“The good, tis true, are heaven’s peculiar care,  
But who but heaven shall show us who they are.”

And our fathers answered the question of the best and surest protection of natural right by their famous phrase, “the consent of the governed.” That is to say, since every man is born with equal natural rights, he is entitled to an equal protection of them with all other men; and since government is that protection, right reason and experience alike demand that every person shall have a voice in the government

upon perfectly equal and practicable terms—that is upon terms which are not necessarily and absolutely insurmountable by any part of the people. These terms cannot rightfully be arbitrary. But the argument of the honorable gentleman from Schenectady, whose lucid and dignified discourse needs no praise of mine, and the arguments of others who have derived government from society, seemed to assume that the political people may exclude and include at their pleasure: that they may establish purely arbitrary tests, such as height, or weight, or color, or sex. This was substantially the squatter sovereignty of Mr. Douglas, who held that the male white majority of the settlers in a territory might deprive a colored minority of all their rights whatever; and he declared that they had the right to do it. The same right that this Convention has to hang me at this moment to that chandelier, but no other right. Brute force, sir, may do anything; but we are speaking of rights, and of rights under this government, and I deny that the people of the State of New York can rightfully, that is, according to right reason and the principles of this government derived from it, *permanently* exclude any class of persons or any person whatever from a voice in the government, unless it can be clearly established that their participation in political power would be dangerous to the State; and therefore, the honorable gentleman from Kings was logically correct in opposing the enfranchisement of the colored man, upon the ground that they were an inferior race, of limited intelligence, a kind of Chimpanzee at best. I think, sir, the honorable and scholarly gentleman—even he—will admit that at Fort Pillow, at Milliken’s Bend, at Fort Wagner, the Chimpanzees did uncommonly well; yes, sir, as gloriously and immortally as our own fathers at Bunker Hill and Saratoga. “There ought to be no Pariahs,” says John Stuart Mill, “in a full grown and civilized nation; no persons disqualified except through their own default. \* \* Every one is degraded, whether aware of it or not, when other people, without consulting him, take upon themselves unlimited power to regulate his destiny.” “No arrangement of the suffrage, therefore, can be permanently satisfactory in which any person or class is peremptorily excluded; in which the electoral privilege is not open to all persons of full age who desire it.” (Rep. G., p. 167.) And Thomas Hare, one of the acutest of living political thinkers, says that in all cases where a woman fulfills the qualification which is imposed upon a man, “there is no sound reason for excluding her from the Parliamentary franchise. The exclusion is probably a remnant of the feudal law, and is not in harmony with the other civil institutions of the country. There would be great propriety in celebrating a reign which has been productive of so much moral benefit by the abolition of an anomaly which is so entirely without any justifiable foundation.” (Hare, p. 280.) The Chairman of the committee asked Miss Anthony the other evening whether, if suffrage were a natural right, it could be denied to children? Her answer seemed to me perfectly satisfactory. She said simply “all that we ask is an equal and not an arbitrary regulation. If you have the

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 I mention these facts

with pleasure, as I read that Louis Napoleon will, under certain conditions, permit the French people to say what they think. But if such reforms are desirable they would have been sooner effected could woman have been a positive political power. Upon this point one honorable gentleman asked Miss Anthony whether the laws both for men and women were not constantly improving, and whether, therefore, it was not unfair to attribute the character of the laws about women to the fact that men made them. The reply is very evident. If women alone made the laws, legislation for both men and women would undoubtedly be progressive. Does the honorable gentleman think, therefore, that woman only should make the laws? It is not true, Mr. Chairman, that in the ordinary and honorable sense of the words women are represented. Laws are made for them by another class and upon the theories which that class, without the fear of political opposition, may choose to entertain, and in direct violation of the principles upon which, in their own case, they tenaciously insist. I live, sir, in the county of Richmond. It has a population of some 27,000 persons. They own property and manage it. They are taxed and pay their taxes, and they fulfill the duties of citizens with average fidelity. But if the committee had introduced a clause into the section they propose to this effect: "Provided that idiots, lunatics, persons under guardianship, felons, inhabitants of the county of Richmond and persons convicted of bribery, shall not be entitled to vote"—they would not have proposed a more monstrous injustice nor a grosser inconsistency with every fundamental right and American principle than in the clause they recommend, and in that case, sir, what do you suppose would have been my reception had I returned to my friends and neighbors, and had said to them, "the Convention thinks that you are virtually represented by the voters of Westchester and Chautauqua." Mr. Chairman, I have no superstition about the ballot. I do not suppose it would immediately right all the wrongs of women, any more than it has righted all those of men. But what external agency has righted so many? Here are thousands of miserable men all around us; but they have every path opened to them; they have their advocates; they have their votes; they make the laws, and at last and at worst they have their strong right hands. And here are thousands of miserable women pricking back death and dishonor with a little needle, and now the sly hand of science stealing that little needle away. The ballot does not make those men happy, nor respectable, nor rich, nor noble. But they guard it for themselves with sleepless jealousy, because they know it is the golden gate to every opportunity; and precisely the *kind* of advantage it gives to one sex, it would give to the other. It would arm it with the most powerful weapon known to political society; it would maintain the natural balance of the sexes in human affairs, and secure to each fair play within its sphere. But, sir, the committee tell us that the suffrage of women would be a revolutionary innovation—it would disturb the venerable traditions. Well, sir, about the year 1790, women were first rec-

ognised as school teachers in Massachusetts. At that time the New England "schoolmarm" and I use the word with affectionate respect, was a revolutionary innovation. She has been abroad ever since, and has been by no means the least efficient, but always the most modest and unnoticed of the great civilizing influences in this country. Innovation,—why, sir, when Sir Samuel Romilly proposed to abolish the death penalty for stealing a handkerchief, the law officers of the Crown said it would endanger the whole criminal law of England. When the bill abolishing the slave trade passed the House of Lords, Lord St. Vincent rose and stalked out, declaring that he washed his hands of the ruin of the British Empire. When the Greenwich pensioners saw the first steamer upon the Thames, they protested that they did not like the steamer, for it was contrary to nature. When, at the close of the reign of Charles II, London had half a million of people, there was a fierce opposition to street lamps. Such is the hostility of venerable traditions to an increase of light. When Mr. Jefferson learned that New York had explored the route of a canal, he benignly regarded it, in the spirit of our committee, as doubtless "defensible in theory," for he said that it was "a very fine project, and might be executed a century hence." And fifty-six years ago, Chancellor Livingston wrote from this city that the proposition of a railroad, shod with iron, to move heavy weights four miles an hour, was ingenious, perhaps "theoretically defensible," but upon the whole the road would not be so cheap or convenient as a canal. In this country, sir, the venerable traditions are used to being disturbed. America was clearly designed to be a disturber of traditions, and to leave nobler precedents than she found. So, a few months ago, what the committee call a revolutionary innovation was proposed by giving the ballot to the freedmen in the District of Columbia. The awful results of such a revolution were duly set forth in one of the myriad veto messages of the President of the United States. But they have voted. If anybody proposed to disturb the election, it was certainly not the new voters. The election was perfectly peaceful, and not one of the Presidential pangs has been justified. So with this reform. It is new, in the extent proposed. It is as new as the harvest after the sowing, and it is as natural. The resumption of rights, long denied or withheld, never made a social convulsion. That is produced by refusing them. The West Indian slaves received their liberty, praying, upon their knees; and the influence of the enfranchisement of women will glide into society as noiselessly as the dawn increases into day. Or shall I be told that women, if not numerically counted at the polls, do yet exert an immense influence upon politics, and do not really need the ballot. If this argument were seriously urged, I should suffer my eyes to rove through this chamber and they would show me many honorable gentlemen of reputed political influence. May they, therefore, be properly and justly disfranchised? I ask the honorable chairman of the committee, whether he thinks that a citizen should have no vote because he has influence? What gives influence? Ability, intelligence, honesty. Are these to be excluded from the polls? Is it only stupidity, ignorance and ras-

ality which ought to possess political power? Or will it be said that women do not want the ballot and ought to be asked? And upon what principle ought they to be asked? When natural rights or their means of defense have been immemorably denied to a large class, does humanity, or justice, or good sense require that they should be registered and called to vote upon their own restoration? Why, Mr. Chairman, it might as well be said that Jack the Giant Killer ought to have gravely asked the captives in the ogre's dungeon whether they wished to be released. It must be assumed that men and women wish to enjoy their natural rights, as that the eyes wish light or the lungs an atmosphere. Did we wait for emancipation until the slaves petitioned to be free? No, sir, all our lives had been passed in ingenious and ignominious efforts to sophisticate and stultify ourselves for keeping them chained; and when war gave us a legal right to snap their bonds, we did not ask them whether they preferred to remain slaves. We knew that they were men, and that men by nature walk upright, and if we find them bent and crawling, we know that the posture is unnatural whether they may think so or not. In the case of women we acknowledge that they have the same natural rights as ourselves—we see that they hold property and pay taxes, and we must of necessity suppose that they wish to enjoy every security of those rights that we possess. So when in this State, every year, thousands of boys come of age, we do not solemnly require them to tell us whether they wish to vote. We assume, as of course, that they do, and we say to them, "go, and upon the same terms with the rest of us, vote as you choose." But gentlemen say that they know a great many women who do not wish to vote, who think it is not lady-like or whatever the proper term may be. Well, sir, I have known many men who habitually abstained from politics because they were so "ungentlemanly" and who thought that no man could touch pitch without defilement. Now, what would the honorable gentlemen who know women who do not wish to vote, have thought of a proposition that I should not vote, because my neighbors did not wish to? There may have been slaves who preferred to remain slaves—was that an argument against freedom? Suppose there are a majority of the women of this State who do not wish to vote,—is that a reason for depriving *one* woman who is taxed, of her equal representation? or one innocent person of the equal protection of his life and liberty? The amendment proposes no compulsion like the old New England law, which fined every voter who did not vote. If there are citizens of the State who think it unlady-like or ungentlemanlike to take their part in the government, let them stay at home. But do not, I pray you, give them authority to detain wiser and better citizens from their duty. But I shall be told, in the language of the report of the committee, that the proposition is openly at war with the distribution of functions and duties between the sexes. Translated into English, Mr. Chairman, this means that it is unwomanly to vote. Well, sir, I know that at the very mention of the

political rights of women, there arises in many minds a dreadful vision of a mighty exodus of the whole female world, in bloomers and spectacles, from the nursery and kitchen, to the polls. It seems to be thought that if women practically took part in politics, the home would instantly be left a howling wilderness of cradles and a chaos of undarned stockings and buttonless shirts. But how is it with men? Do they desert their workshops, their plows and offices, to pass their time at the polls? Is it a credit to a *man* to be called a professional politician? The pursuits of men in the world, to which they are directed by the natural aptitude of sex and to which they must devote their lives, are as foreign from political functions as those of women. To take an extreme case. There is nothing more incompatible with political duties in cooking and taking care of children than there is in digging ditches or making shoes, or in any other necessary employment, while in every superior interest of society growing out of the family, the stake of women is not less than men, and their knowledge is greater. In England, a woman who owns shares in the East India Company may vote. In this country she may vote, as a stockholder, upon a railroad from one end of the country to another. But if she sells her stock and buys a house with the money, she has no voice in the laying out of the road before her door, which her house is taxed to keep and pay for. And why, in the name of good sense if a responsible human being may vote upon specific industrial projects may she not vote upon the industrial regulation of the State? There is no more reason that men should assume to decide participation in politics to be unwomanly than that women should decide for men that it is unmanly. It is not our prerogative to keep women feminine. I think, sir, they may be trusted to defend the delicacy of their own sex. Our success in managing ours has not been so conspicuous that we should urgently desire more labor of the same kind. Nature is quite as wise as we. Whatever their sex incapacitates women from doing they will not do. Whatever duty is consistent with their sex and their relation to society, they will properly demand to do until they are permitted. When the committee declare that voting is at war with the distribution of functions between the sexes, what do they mean? Are not women as much interested in good government as men? Has the mother less at stake in equal laws honestly administered than the father? There is fraud in the Legislature; there is corruption in the courts; there are hospitals, and tenement houses, and prisons; there are gambling-houses, and billiard-rooms, and brothels; there are grog-shops at every corner, and I know not what enormous proportion of crime in the State proceeds from them; there are forty thousand drunkards in the State, and their hundreds of thousands of children—all these things are subjects of legislation, and under the exclusive legislation of men the crime associated with all these things becomes vast and complicated,—have the wives and mothers and sisters of New York less vital interest in them, less practical knowledge of them and their proper treatment, than the husbands and fathers? No



man is so insane as to pretend it. Is there then any natural incapacity in women to understand politics? It is not asserted. Are they lacking in the necessary intelligence? But the moment that you erect a standard of intelligence which is sufficient to exclude women as a sex, that moment most of their amiable fellow citizens in trousers would be disfranchised. Is it that they ought not to go to public political meetings? But we earnestly invite them. Or that they should not go to the polls? Some polls, I allow, in the larger cities, are dirty and dangerous places, and those it is the duty of the police to reform. But no decent man wishes to vote in a grog-shop, nor to have his head broken while he is doing it, while the mere act of dropping a ballot in a box is about the simplest, shortest and cleanest that can be done. Last winter Senator Frelinghuysen, repeating, I am sure thoughtlessly, the common rhetoric of the question spoke of the high and holy mission of women. But if people, with a high and holy mission, may innocently sit bare-necked in hot theaters to be studied through pocket telescopes until midnight by any one who chooses, how can their high and holy mission be harmed by their quietly dropping a ballot in a box? But if women vote, they must sit on juries. Why not? Nothing is plainer than that thousands of women who are tried every year as criminals are not tried by their peers. And if a woman is bad enough to commit a heinous crime, must we absurdly assume that women are too good to know that there is such a crime? If they may not sit on juries, certainly they ought not to be witnesses. A note in Howell's State Trials to which my attention was drawn by one of my distinguished colleagues in the Convention, quotes an ancient work, "Probation by witnesses," by Sir George Mackenzie, in which he says, "The reason why women are excluded from witnessing must be either that they are subject to too much compassion and so ought not to be more received in criminal cases than in civil cases; or else the law was unwilling to trouble them and thought it might learn them too much confidence and make them subject to too much familiarity with men and strangers, if they were necessitated to vague up and down at all courts upon all occasions." Hume says this rule was held as late as the beginning of the eighteenth century. But if too much familiarity with men be so pernicious, are men so pure that they alone should make laws for women, and so honorable that they alone should try women for breaking them? It is within a very few years at the Liverpool Assizes in a case involving peculiar evidence that Mr. Russell said: "The evidence of women is, in some respects, superior to that of men. Their power of judging of minute details is better, and when there are more than two facts and something be wanting, their intuitions supply the deficiency." "And precisely the qualities which fit them to give evidence," says Mrs. Dall to whom we owe this fact "fit them to sift and test it." But the objectors continue, would you have women hold office? If they are capable and desirous, why not? They hold office now most acceptably. In my immediate neighborhood a postmistress has

been so faithful an officer for seven years, that when there was a rumor of her removal, it was a matter of public concern. This is a familiar instance in this country. Scott's "Antiquary" shows that a similar service was not unknown in Scotland. In Notes and Queries ten years ago (vol. II, sec. 2, 1856, pp. 83, 204), Alexander Andrews says: "It was by no means unusual for females to serve the office of overseer in small rural parishes," and a communication on the same publication (1st series vol. II, p. 383), speaks of a curious entry in the Harleian Miscellany (MS. 980, fol. 153.) \*The Countess of Richmond, mother to Henry VII, was a Justice of the Peace. Mr. Attorney said if it was so, it ought to have been by commission, for which he had made many an hower's search for the record, but could never find it, but he had seen many arbitraments that were made by her. Justice Jonnes affirmed that he had often heard from his mother of the Lady Bartlett, mother to the Lord Bartlett, that she was a Justice of the Peace, and did set usually upon the bench with the other Justices in Gloucestershire; that she was made so by Queen Mary, upon her complaint to her of the injuries she sustained by some of that county, and desiring for redress thereof; that as she, herself, was Chief-Justice of all England, so this lady might be in her own county, which accordingly the Queen granted. Another example was alleged of one — Rowse, in Suffolk, who usually at the assizes and sessions there held, set upon the bench among the Justices *gladio cincta*." The Countess of Pembroke, was hereditary sheriff of Westmoreland, and exercised her office. Henry the Eighth granted a Commission of inquiry, under the great seal, to Lady Ann Berkeley, who opened it at Gloucester and passed sentence under it. Henry Eighth's daughter, Elizabeth Tudor, was Queen of England, in name and in fact, during the most illustrious epoch of English history. Was Elizabeth incompetent? Did Elizabeth unsex herself? Or do you say she was an exceptional woman? So she was, but no more an exceptional woman than Alfred, Marcus Aurelius or Napoleon were exceptional men. It was held by some of the old English writers that a woman might serve in almost any of the great offices of the Kingdom. And indeed if Victoria may deliberate in council with her ministers, why may not any intelligent English woman deliberate in Parliament or any such American woman in Congress? The whole history of the voting, and office holding of women shows that whenever men's theories of the relation of property to the political franchise—or of the lineal succession of the government, requires that women shall vote or hold office, the objection of impropriety and incapacity wholly disappears. If it be unwomanly for a woman to vote, or to hold office, it is unwomanly for Victoria to be Queen of England. Surely if our neighbors had thought they would be better represented in this Convention by certain women, there is no good reason why they should have been compelled to send us. Why should I or any person be forbidden to select the agent whom we think most competent and truly representative of our will? There is no talent or training required in the making of laws

which is peculiar to the male sex. What is needed is intelligence, and experience. The rest is routine. The capacity for making laws is necessarily assumed when women are permitted to hold and manage property and to submit to taxation. How often the woman, widowed or married or single, is the guiding genius of the family—educating the children, directing the estate, originating, counseling, deciding. Is there anything essentially different in such duties and the powers necessary to perform them from the functions of legislation? In New Jersey the Constitution of 1776 admitted to vote all inhabitants of a certain age, residence and property. In 1797, in an act to regulate elections, the ninth section provides: "Every voter shall openly and in full view, deliver his or her ballot, which shall be a single written ticket, containing the names of the persons for whom he or she votes." An old citizen of New Jersey says that "the right was recognized and very little said or thought about it in any way." But in 1807 the suffrage was restricted to white male adult citizens of a certain age, residence and property, and in 1844 the property qualification was abolished. At the hearing before the committee, the other evening, a gentleman asked whether the change of the qualification excluding women did not show that their voting was found to be inconvenient or undesirable. Not at all. It merely showed that the male property holders outvoted the female. It certainly showed nothing as to the right or expediency of the voting of women. Mr. Douglas as I said, had a theory that the white male adult squatters in a territory might decide whether the colored people in the territory should be enslaved. They might, indeed, so decide, and with adequate power, they might enforce their decision. But it proved very little as to the right, the expediency or the constitutionality of slavery in a territory. The truth is that men deal with the practical question of female suffrage to suit their own purposes. About twenty-five years ago the Canadian government by statute rigorously and in terms forbade women to vote. But in 1850, to subserve a sectarian purpose they were permitted to vote for school trustees. I am ashamed to argue a point so plain. What public affairs need in this State is "conscience," and woman is the conscience of the race. If we in this Convention shall make a wise Constitution, if the Legislatures that follow us in this chamber shall purify the laws and see that they are honestly executed, it will be just in the degree that we shall have accustomed ourselves to the refined, moral and mental atmosphere in which women habitually converse. But would you, seriously, I am asked, would you drag women down into the mire of politics? No, sir, I would have them lift us out of it. The duty of this Convention is to devise means for the purification of the government of this State. Now the science of government is not an ignoble science, and the practice of politics is not necessarily mean and degrading. If the making and administering of law has become so corrupt as to justify calling politics filthy, and a thing with which no clean hands can meddle without danger, may we may not wisely remember as we begin our work of purification, that

politics have been wholly managed by men? How can we purify them? Is there no radical method, no force yet untried, a power not only of skillful checks which I do not undervalue, but of controlling character. Mr. Chairman, if we sat in this chamber with closed windows until the air became thick and fetid, should we not be fools if we brought in deodorizers—if we sprinkled chloride of lime and burned asafetida, while we disdained the great purifier? If we would cleanse the foul chamber, let us throw the windows wide open and the sweet summer air would sweep all impurity away and fill our lungs with fresher life. If we would purge politics let us turn upon them the great stream of the purest human influence we know. But I hear some one say, if they vote they must do military duty. Undoubtedly, when a nation goes to war, it may rightfully claim the service of all its citizens, men and women. But the question of fighting is not the blow merely, but its quality and persistence. The important point is, to make the blow effective. Did any brave Englishman who rode into the jaws of death at Balaklava, serve England on the field more truly than Florence Nightingale? That which sustains and serves and repairs the physical force, is just as essential as the force itself. Thus the law, in view of the moral service they are supposed to render, excuses clergymen from the field, and in the field it details ten per cent of the army to serve the rest, and they do not carry muskets nor fight. Women, as citizens, have always done and always will do that work in the public defense for which their sex peculiarly fits them, and men do no more. The care of the young warriors, the nameless and innumerable duties of the hospital and home, are just as essential to the national safety as fighting in the field. A nation of men alone could not carry on a contest any longer than a nation of women. Each would be obliged to divide its forces and delegate half to the duties of the other sex. But while the physical services of war are equally divided, between the sexes, the moral forces are stronger with women. It was the women of the south, we are constantly and doubtless very truly told, who sustained the rebellion, and certainly without the women of the north the government had not been saved. From the first moment to the last, in all the roaring cities, in the remote valleys, in the deep woods, on the country hill sides, on the open prairie, wherever there were wives, mothers, sisters, lovers, there were the busy fingers which, by day and night, for four long years, like the great forces of spring time and harvest, never failed. The mother paused only to bless her sons, eager for the battle; the wife to kiss her children's father, as he went; the sister smiled upon the brother, and prayed for the lover who marched away. Out of how many hundreds of thousands of homes and hearts they went who never returned; but these homes were both the inspiration and the consolation of the field. They nerved the arm that struck for them. When the son, and the husband, fell in the wild storm of battle, the brave woman's heart broke in silence, but the busy fingers did not falter. When the comely brother and lover were tortured into idiocy and despair

that woman heart of love kept the man's faith steady, and her unceasing toil repaired his wasted frame. It was not love of the soldier only, great as that was, it was knowledge of the cause. It was that supreme moral force operating through innumerable channels, like the sunshine in nature, without which successful war would have been impossible. There are thousands and thousands of these women who ask for a voice in the government they have so defended. Shall we refuse them? I appeal again to my honorable friend the chairman of the committee. He has made the land ring with his cry of universal suffrage and universal amnesty. Suffrage and amnesty to whom? To those who sought to smother the government in the blood of its noblest citizens, to those who ruined the happy homes and broke the faithful hearts of which I spoke. Sir, I am not condemning his cry. I am not opposing his policy, I have no more thirst for vengeance than he and quite as anxiously as my honorable friend, do I wish to see the harvests of peace waving over the battle fields. But, sir, here is a New York mother who trained her son in fidelity to God and to his country. When that country called, they answered. Mother and son gave, each after his kind, their whole service to defend her. By the sad fate of war the boy is thrown into the ghastly den at Andersonville. Mad with thirst he crawls in the pitiless sun toward a muddy pool. He reaches the dead-line, and is shot by the guard — murdered for fidelity to his country. — "I demand amnesty for that guard, I demand that he shall vote," cries the honorable chairman of the committee. I do not say that it is an unwise demand. But I ask him, I ask you, sir, I ask every honorable and patriotic man in this State, upon what conceivable grounds of justice, expediency or common sense shall we give the ballot to the New York boy's murderer and refuse it to his mother? I have thus stated what I conceive to be the essential reasonableness of the amendment which I have offered. It is not good for man to be alone, united with woman in the creation of human society; their rights and interests in its government are identical, nor can the highest and truest development of society be reasonably conceived, so long as one sex assumes to prescribe limits to the scope and functions of the other. The test of civilization is the position of women. Where they are wholly slaves, man is wholly barbarous; and the measure of progress from barbarism to civilization is the recognition of their equal right with man to an unconstrained development. Therefore when Mr. Mill unrolls his petition in Parliament to secure the political equality of women, it bears the names of those English men and women whose thoughts foretell the course of civilization. The measure which the report of the committee declares to be radically revolutionary, and perilous to the very functions of sex, is described by the most sagacious of living political philosophers as reasonable, conservative, necessary and inevitable; and he obtains for it 73 votes in the same House in which out of about the same whole number of voters Charles James Fox, the idol of the British Whigs, used to be able to rally

only forty votes against the policy of Pitt. The dawn in England will soon be day here. Before the American principle of equal rights, barrier after barrier in the path of human progress falls. If we are still far from its full comprehension and further from perfect conformity to its law, it is in that only like the spirit Christianity to whose full glory even Christendom but slowly approaches. From the heat and tumult of our politics we can still lift our eyes to the eternal light of that principle; can see that the usurpation of sex is the last form of caste that lingers in our society; that in America the most humane thinker is the most practical man, and the organizer of justice the most sagacious statesman.

Mr. GOULD — Mr. Chairman—

Mr. RATHBUN — I rise to a point of order. I believe that our rules provide that members shall not speak more than once on any question so long as any other member may desire the floor.

The CHAIRMAN — In the opinion of the Chair the point of order is not well taken, as the rule applies to each amendment, and the gentleman from Columbia [Mr. Gould] has not spoken on the pending amendment.

Mr. GOULD — The pleasure with which I have listened to the remarks of the gentleman from Richmond, [Mr. Curtis] has been shared by a majority of the members of the Convention. The argument of the gentleman has been polished from the foundation stone to the topmost dome; it has glowed, sir, like a crystal palace, with the most gorgeous prismatic hues, but like a crystal palace, it will be found to be as frangible as the crystal. He stated, sir, in the commencement that he did not care to inquire into the musty origin of human rights. I, for my part, desire to anchor my opinions upon the sure and solid foundation of all rights and of all privileges whatever. I assume, sir, that the origin of all rights is God, who created man. He, at the very moment of creation established certain laws which should govern them, which should establish all their rights, and all their relations. There is, sir, a *lex scripta* and a *lex non scripta*, and each is of as binding obligation as the other. How do we find, sir, this unwritten law? We find it, sir, because the law of God is perfect, and if we find that there is any certain set of rules governing the relations of men with each other, which, through all time and on all occasions work advantageously, we may know with absolute certainty, that those rules are consistent with the laws of God. I may stand here, sir, among the gentlemen with whom I am associated in this Convention, and if I observe with the most perfect fidelity those rules which God has created, to regulate my intercourse with my fellow men, I shall find a place in every heart here, and the longer we remain together, the more dear I will become to every heart; but, sir, if I transgress those laws which God has thus established, I should soon be an offense in the nostrils of every member. Now, sir, when man comes into the world and stands alone, his right undoubtedly is to do as he pleases in every respect; but, sir, as soon as he enters into society, those rights which were perfect before, become imperfect rights; they become modified at once by his relations with



society. God is as much the author of society as he is the author of the individual; the laws which he has given for the regulation of society are absolutely as binding as the laws which he has given to individuals; the rights of society are precisely as sacred as the rights of individuals. Sir, when man comes into society it is obvious that he cannot do as he pleases, because if he pleases to do that which is contrary to what another man pleases to do, at once there arises a conflict of those rights, and one or the other must give way, or some superior power must decide which shall give way. Sir, when this question arises, when this conflict of rights is observed, there must be evidently some common superior to decide which shall give way, and that common superior is the sovereign. What is sovereignty, sir? By what mark is sovereignty ascertained? Sir, whatever power in a given independent community is habitually obeyed by the great mass of the people, but which in its turn, obeys no other power whatever, is the sovereign power; and wherever we shall find it, there it is. Let us test this thing, sir. Suppose it is asserted that the sovereign power in the State of New York is in the Governor and the Legislature, a very trifling analysis will show us that we are mistaken in thus locating the sovereign power of the State of New York. If you go to the Governor of this State, and ask for an office, or if you asked it in the days of the old "Albany Regency," the Governor might promise you, as the Governors in those days did promise repeatedly, that you should have the office you desired; but, sir, when Edwin Croswell came in and told the Governor that he had another person for that office, that it would be unwise for the Governor to make the appointment he had promised, did you not find the old democratic Governors give way, and that the nominee of Edwin Croswell was appointed? In republican times, before the breaking out of the war, when a republican Governor has promised an office to a man, and Mr. Weed has told him it would never answer, have you not found the Governor give way, and that Mr. Weed's nominee has been appointed? Yet neither of these men were sovereigns. When they fell from their original faith, they were, like Sampson, shorn of their strength, and there were none so poor as to do them reverence. Well, sir, you go to the Legislature; you go from man to man, and they promise you their vote, but the leading politician goes about among them and tells them they must not vote in the manner they have promised, that there will be destruction arising to the party from their voting in that direction, and they give way. You find that the powers which you suppose are the sovereign powers of the State, are not sovereign, because they themselves are governed by some higher power, and, therefore, they are excluded from the sovereignty by the definition which I have given. So, sir, when you go across the Atlantic, and find the sovereigns, kings and princes ruling there; when you go to the great Louis XIV, who had the presumption to declare *l'Etat, cest moi*—that he was the State, that he was the center and fountain of all sovereignty and power, do you not find that there was a power above him,

which while he was thus boasting, was silently undermining the foundations of his throne, and that that destroying power culminated in the death of Louis XVI? Did you not then find that the sovereignty existed in the people of France? So it is with Russia, sir; there is a power superior even to the sovereign of Russia; it expresses that power through public opinion, masked as it may be, and still oftener does it express its power by the poniard or by the poison. Try as you will, sir, there is no sort of sovereignty to be found but in the people, and there sir, the analysis fails. You may apply these, and similar tests and it is always found that there is no power beyond them—no power above or beneath them. We have then got the sovereignty, we have got the power which determines in contests between individuals. But, sir, when we have found the sovereign power, we find it is comprised in the whole mass of the community; of the men, of the women, of the lunatics, of the idiots, of the infants,—every class of society go to make up the mass of sovereignty. But, this sovereignty cannot express itself; it has no power to give expression to its feelings, or its behests—there are certain classes of it which are physically incapable of expressing that sovereignty. The infants are incapable of expressing the sovereign will; we must here cut them off from this expression; we must distinguish between a vote and an influence—between an influence in the sovereignty and a vote in the exercise of the sovereignty. Sir, the infant does exercise power. If you attempt to interfere with the rights of infants you will soon find from above, and from beneath and from all around, a secret and silent, but a powerful influence constraining you. The cry of the infant is a power in the State, and although the infant may not vote, it exercises its power. mark that; the women of the State do not vote, but do they not exercise an influence, and a powerful influence? Suppose that any measure shall be attempted to be passed by the Legislature of this State, or by the Parliament of England, which conflicts with the views and feelings of the women of New York or the women of England; do you not suppose that they would find means of making that powerful influence felt without a vote. Sir, all history is replete with that influence—the sovereignty of the woman exercised without any vote. Do you not find it, sir, in the history of France, that at times the mistresses of her kings have been the real rulers of that nation? Have you not found that the writings of women here have strongly influenced the expression of the sovereignty, so that without the vote they have moulded public opinion? Certainly you have, sir. But then, with regard to the votes, we must segregate from the mass of sovereignty a certain select mass to give the expression of that sovereignty. I concur wholly with the gentleman from Oneida [Mr. T. W. Dwight]. I believe we must exclude precisely those classes from the expression of the sovereignty, if we would have the State safely governed. I would only add another class to those which he has enumerated; I would say that if there is any class in the community which would



be truly injured in their own persons, or property, or character by the exercise of the franchise, that class ought to be excluded. I would exclude those who had an adverse interest to the interest of the people; I would exclude those who lack intelligence, and by excluding that class I would exclude the lunatic; I would exclude the idiot, and in addition to those I would exclude any class which would be injured by the exercise of that franchise, and that sir, is the reason why I would exclude women from voting, because they would be deeply injured in their characters, injured in their feelings, injured in that which is most precious to them, which they value as a pearl above all price. I would exclude women, sir, because they themselves desire the exclusion. And how do I know that they desire that exclusion, sir? Well, sir, I stand here as a witness. My wife and my daughters, sir, who I know best, are wholly opposed to women voting. They say to me that they would lose by voting that which is most precious to them, they would lose their delicacy, would lose all that is most feminine within them, they would lose all that which enables them to exercise the transcendent influence which I have shown has been exercised by women in all time, and which has been so exceedingly beneficent in its influence. Sir, I presume that I am acquainted with as large a number of examples of intelligent womanhood of New York, as most gentlemen in this chamber, and I can say, sir, as a witness before this Convention, that in the whole circle of my female acquaintance, I can remember but a single individual who desires the vote for females. And sir, she does not desire it; she is willing to assume it as a burden. In conversation with her she said that she abhorred the idea of entering into the political field; but if it was her duty as a woman to exercise the right of suffrage, she would be willing to assume it. She did not desire it, sir; she was only willing to suffer it. I have conversed with many gentlemen who are members of this Convention, and they have assured me that their experience is precisely parallel with my own; and I ask every gentleman here to answer that question, whether, within the extent of his female acquaintance, embracing the purest womanhood of New York, he does not find that they are almost unanimous in rejecting the proffered franchise. If this, sir, is so, if the genuine womanhood of New York, are opposed to assuming the burden of the elective franchise, if those whom we most love and most revere, our mothers, our wives, our sisters, and our daughters, are opposed to it, I say that we have no right to urge this thing upon them. Sir, the very last lady who drank tea at my house before I came here, was the wife of a judge of the supreme court of New York, and as she pressed my hand in taking leave of me, she said "sir, I beseech you, whatever you may do in the Convention about to assemble, that you will not impose the elective franchise upon us." Sir, that has been the expression of nearly every woman with whom I have come in contact. Let us inquire for a moment whether these ladies entertain this view erroneously, or whether they entertain it on grounds which can be based on reason and on justice. There are two systems of law known in the civilized world; the one is

called the civil law, the other the common law; both of them have the advantage of having grown out of the exigencies of humanity; both of them are coherent systems; both of them rest upon fundamental ideas. I say, sir, that those two systems, with regard to domestic relations, are perfectly coherent in themselves; but each of them proceeds upon very different fundamental ideas. The idea of the civil law, the law which had its origin in heathen times, and grows out of heathen ideas, has for a central idea in connection with the domestic relations, the idea of partnership. The marriage relation, according to that law, is simply a partnership, just as Mr. Reynolds and Mr. Harris are partners in law in the city of Albany, and just as Mr. Corning and Mr. Winslow are partners in the iron trade in the city of Albany. The relation of husband and wife under the civil law is precisely that of Messrs. Corning and Winslow or Messrs. Reynolds and Harris, under the common law, no higher and no deeper. The partnership in the one case has for its interest the care and rearing of children; in the other case it has the manufacture of iron; but their relations are precisely the same. Under the civil law the husband frequently sues the wife, and the wife the husband; the wife is in one business and the husband in the other, and suits at law are not uncommon; and when they are brought before the courts the husband may testify in regard to the business of the wife, and the wife may testify in regard to the business of the husband. Accordingly, under that law, secrets which the husband has reposed in the bosom of his wife may be drawn out by process of law. Husband and wife may have separate property, they may have separate interests of every kind. Sir, it is impossible that such a system of law should not react upon the character of woman; that it should not react upon the character of children; and that it should not react upon the character of the whole population. The character of the whole population must have a certain definite relation to the fundamental idea under which the law was established. But the fundamental idea of the common law which grew up under Christian auspices, is radically different. That idea has been expressed by the gentleman from Richmond [Mr. Curtis] as the idea of coverture; the wife loses her separate identity, and they two together become one compound being, which is expressed by the name of husband; she is supposed to be concealed from the world; the husband is seen and not herself. In perfect accordance with this fundamental theory, are all the provisions of the common law. The common law prohibits the judge from drawing out by legal process, the secrets which have been reposed in the bosom of the wife by the husband; she cannot testify against her husband; she therefore has no separate interests apart from her husband, her property is his property, and his property is her property. The property is owned by the compound being which has been established under the operation of the common law. If the husband and wife go into a store and the wife steals in the presence of her husband, the law charges the theft upon the husband and not upon the wife; the law looks upon the husband as guilty and

not the wife. Everything in the law is harmoniously arranged to make the interests of the parties identical. Sir, which would you suppose would operate most beneficially; the idea of coverture, or the idea of partnership, the idea of an absolute identity of interest, or the idea of an absolute difference of interest, and from what you know of the law which regulates humanity, would you not suppose that a common interest would lead to more harmony than different interests would? Certainly, sir, this is the case, and it has been found, on a comparison of the statistics of nations governed by the common law, and those governed by the civil law, that there is infinitely more happiness, more peace, more virtue growing out of the operations of the common law than is found under those of the civil law. The civil law obtains in France, and you know what Parisian women are; you know what the results of Parisian society are; you know how children grow up there degraded and miserable. It is true that where the civil law exists the Catholic religion obtains and divorces *a vinculo et matrimonii* are rare; but divorces *a mensa et thoro* are very common, and infinitely more numerous than in countries governed by the common law. Sir, what does the gentleman from Richmond [Mr. Curtis] propose? He proposes to engraft the principles of the civil law upon the common law in this State. The other day when Mrs. Stanton addressed us she told us that twenty years ago, men began for the first time to do justice to women. What did man do twenty years ago? What did the Legislature of this State and of other States do twenty years ago? They began to adopt the principles of the civil law and engraft them on the common law; they began to make a difference between the interests of husband and wife; they began to invest her with the right of testifying; with the right of holding separate property; and with the right of making wills against her husband's consent. All these things were commenced at that time, and they have been gradually increasing down to the present day. The gentleman from Richmond [Mr. Curtis] wants us to go a long step in advance, and still further to make a disruption in our social institutions. That lady when the question was asked her, said that from the very commencement of this change the character of the woman had been gradually improving. Sir, I want to relate a fact which is within my own personal knowledge. Twenty years ago the proportion of female criminals to male criminals in the State of New York, was as twelve to one; there were twelve men in our common jails at that time where there was one woman; and in the Tombs of the city of New York, there were six men to one woman. Sir, during all that time in which the character of woman has been "progressing" what has been the result? In 1865 I visited every jail in the State of New York, and what was the proportion of women to men in our jails at that time? Taking the whole State together, the ratio was as four to one. It had been reduced from twelve to one to four to one; and in the Tombs in the City of New York that year, there had been upwards of sixteen hundred more women committed than there had been men. The women were absolutely in excess—

Mr. KINNEY—I would like to make an inquiry of the gentleman [Mr. Gould]. I would like to know, when he states there were twelve males to one female in the State prisons, if he has reference to the State prisons or the county jails?

Mr. GOULD—I am speaking of the common jails; a much better illustration of the general action of society than the State prisons would be. Precisely the same thing was found in Raymond street jail in Brooklyn, where there had been upwards of nine hundred more women committed to the jail than there had been men. That, sir, is an illustration of Mrs. Stanton's improvement. That, sir, is the result of this engrafting the principles of the civil law, on to the principles of the common law. Let me ask this Convention to pause before they extend the engrafting of these principles further. I think that the facts, which I have stated conclusively, vindicate the opinions of the ladies of whom I have been speaking. They show that the introduction of new causes of discord between men and women are calculated to destroy the sweetest sources of domestic felicity and domestic joy; that they poison the very well-springs of education, and make the family instead of being the best, one of the worst institutions for the education of the race. What sort of children will raise up when they see the father and mother, one being a republican and the other a democrat, constantly quarreling with each other with regard to political affairs, when they see the husband going about among his acquaintances, urging some and bribing others to vote his ticket, and the wife going around among her acquaintances, urging some and bribing others to vote her ticket. Can we contemplate such a scene as that without the most painful feelings of distress and horror? Can we expect that our republic will prosper when such a conflict is raging around the domestic hearth? Sir, I deprecate the idea. I object to the course of the gentleman from Richmond [Mr. Curtis] for another reason. A very large portion—larger than gentlemen generally suppose, of those who are now invested with the exercise of the franchise habitually abstain from its exercise at the polls. I look upon this as a great evil. I think the duty of voting ought always to be annexed to the right to vote. Sir, for the last twenty years the average number of those who have actually exercised the right of franchise at the polls has been only seventy-three per cent of the whole number who have the right to that privilege. The greatest proposition that we have ever seen to vote in the State of New York, was in the year 1860, when ninety-one per cent of those who were entitled to vote, absolutely exercised the franchise. In 1847 we had the smallest number, when only fifty-three per cent exercised that right. Sir, in those terrible years, which many gentlemen recollect here, the years of the Jackson and Adams controversy, when party spirit ran so very high, and when good men were fearing that the result of that conflict would absolutely destroy the republic, the proportion of voters which exercised the franchise was only fifty-seven per cent of the whole; notwithstanding the great amount of conflict which existed. What was the rea-

son of that? It was during that time that the term "unterrified democracy" and many other of these cant terms were applied. The democrats then were a "fighting democracy." The quiet, tranquil people at the polls were frightened from going there, in consequence of the ferocity of the conflicts that occurred there; and if my old friend, Thurlow Weed, never did another good thing in his life he did it when here, in the Fourth Ward in Albany, he went at the head of his own men, with his hickory cudgel in his hand, and opened these polls that men might go there and vote; I say that is the crowning jewel in his diadem. I think it is very clear that the great reason why a larger vote was not polled, and why there was so great a conflict, so great a feeling of hostility between the respectable parties there, was that the minority felt that they were not honestly in the minority. They felt they did have a reserve force who would vote with them, but who refused to go to the polls, simply because they were afraid to go there. They did not wish to go through the conflict and peril which was incident to voting at that period. The objection I have to the female vote is precisely this, that the proportion of those who would exercise the elective franchise in proportion to the whole number of votes would be greatly diminished. I know if you grant that right, the great mass of the thoughtful and delicate women of New York will absolutely refuse to exercise it. Instead of having seventy per cent vote as now, you will not have over forty or fifty per cent; it will be a great vote which will bring out fifty per cent of the total mass of voters. The ladies in our kitchens will vote, but the women in our parlors will never be found there. I think conflicts will be generated when men feel that they have not had a real majority against them; when they feel that those who have the right to exercise the elective franchise have not expressed it there with them, and who are not with the majority. I cannot conceive of anything which would have a greater tendency to introduce quarrels and conflict into this government; of anything which would have a greater tendency to destroy it than precisely such a course as this. I think the gentleman from Herkimer [Mr. Graves] proposed that the question should be determined by the women themselves. But, sir, an expression taken in that way would not be, by any means, a true expression, therefore I am opposed to his proposition for that very reason. Who would vote at a poll of that kind? Every prostitute in the city of New York would vote there! Madam Restell, in her splendid and gorgeous carriage coming from the slaughter of the innocents would vote there; all the "pretty waiter girls" would be there. But could you get the real women of New York to vote? No, sir, you could not drag them there with log chains; you could not drive them there with a whip of scorpions. So the answer to a vote of that character would be spurious and illegitimate; it would be an *ignis fatuus*; it would only lead it to bewilder, to dazzle, to blind. For these reasons I am opposed to female suffrage. I believe it is fraught with incalculable evils to the whole community; and if this Convention is

wise it will retain the long established Constitution of our forefathers in this respect, which on the whole has worked so well, and they will not introduce any of these new fangled notions which are suggested by the gentleman from Richmond [Mr. Curtis], and by his coadjutors.

Mr. LARREMORE—I did not suppose that this question would find so earnest an advocate in this Convention. It was the general impression of many of the members that the unanimous report of the very intelligent committee, to whom the question of female suffrage had been referred, had definitely settled the matter for the next twenty years at least. This conclusion, however, seems to have been premature. There is a buoyancy, an elasticity about this subject, so to speak, that will cause it to float and bound in our very midst until some decisive action is had by this body. It is apparent now that we must vote upon it. If this could be done in the ordinary way, no doubt we should save much valuable time, but if, as has been intimated to me, the ayes and noes are to be called on this question when final action is taken in the Convention, it then becomes important that we have an honest and intelligent record. Shall we answer the many respectful and forcible appeals to which we have listened, by a simple but emphatic "No," without the courage or the courtesy to give a reason why? For one, I am unwilling that my vote should be recorded, unless it be preceded by the motives that prompt it. He is a brave man, indeed, who shall here record his unexplained denial of female suffrage, and then venture within the charmed precincts of the opposite sex during the remaining period of his natural life. This question comes before us invested with peculiar interest and importance. With interest, because it emanates from those with whom our most cherished sympathies are associated, and with importance, because it involves the future welfare of society. It contemplates such a radical change in the social world, as would shake it from center to circumference. It has been said by an eminent jurist of this State, that the most perfect human laws can claim no higher merit than that they have followed nature. Sir, we have heard a great deal about the divine origin of government, and let us take this as a starting point, and look for a moment at the divine economy of that government from which man has vainly attempted to model his own. Is there not a peculiar distinctiveness and adaptation in all the laws that govern the natural world whether it be in the planetary system or in the world around us. Every thing in nature animate or inanimate, has each a separate and peculiar sphere. And has not society inaugurated a system of rules that follows out this analogy? Do we not here find gradations, distinctions and characteristics that have drawn plain and ineffaceable lines of separation and exclusiveness. If this be true of individuals as a class, is it not more than true as applied to the sexes? Let us see. From the creation of the world to the present day, the divinely constituted head and the divinely bestowed helpmeet have pursued their earthly pilgrimage together in unity, yet in variety. From age to age, from one generation to another, they have come down to us one in reciprocal sympathy and



affection, yet separate and distinct in the pursuits and activities of life. I need not enlarge upon this subject, or strengthen it by comparisons to suggest the proposition at which I am arriving. I desire merely, Mr. Chairman, to state my objections to the amendment as proposed, in order that I may stand honestly and fairly upon the record when the vote comes to be taken in the Convention. My first objection is that female suffrage is contrary to the instincts of our nature, and prejudicial to all existing relations. I think it needs no argument to prove that the respect and the sympathy we entertain for woman is inherent and not depending on adventitious circumstances. It is something that proceeds from within and does not come to us from without. It is not dependent upon position or worldly surroundings. It is a part and parcel of our very existence. My next objection is that it is unnecessary. The gentleman from Richmond [Mr. Curtis], in the very eloquent address to which we all had the pleasure of listening, made the assertion somewhat unqualifiedly, I think, that men were not wise enough or fit enough to legislate for women. Mr. Chairman, I refer you to our statute books, and you will see on them how liberally the people of this State have legislated for women. I refer to the married woman's act, so called, of 1848, and the act of 1862. I do not think he can find a solitary instance in which the rights of women have been prejudiced or jeopardized. How is it when she appeals to the courts? How difficult is it to obtain a jury that will agree, in a case where her rights are involved, and where they must pass upon them adversely. I think it as susceptible of proof that man is quite as capable of passing laws for her protection as she would be, and that the largest liberality has been evinced in that respect. I am reminded in this connection, of a little incident that came under my personal observation, growing out of a passage of the law of 1848, to which I will refer, to show that woman invested with authority is not always so kind and just as has been claimed for her by the gentleman from Richmond [Mr. Curtis] when she has the opportunity to exercise it. I am happy to say that the case is an exceptional one. A gentleman who, by industry and economy, had amassed a sum of money, invested it in the purchase of lands and the erection of buildings thereon, from which he might derive a permanent revenue for the support of his family. He was about to engage in some mercantile enterprise, and at the suggestion of his wife the property was conveyed to her in order that it might be saved to his family and himself in the event of any misfortune in business. The business terminated; he retired from it; he closed up his affairs and was ready to spend his life in peace and comfortable independence. He then sought a reconveyance of the property. This was refused under the advice of the relatives of his wife. Some few years after, a child, the only issue of marriage between them, died, and immediately following that a brother of the wife was installed as a sort of steward over the house to collect the rents and disburse them. The husband was obliged to go to his wife for the very pocket money he needed to meet his daily expenses. A long

series of indignities followed, which culminated in the presentation, by his wife, of a meerschaum and paper of tobacco, accompanied with the suggestion that while the government tax remained so high, he must not indulge in the luxury of smoking cigars. Was there a perfect equality of rights there? One of the great objections to the exercise of this right by woman is one that I think has been almost left untouched in the consideration of this subject by those who have addressed the committee, and that is that it is incompatible with the domestic and social duties and relations. No one will pretend to deny that woman has a work to perform which is peculiar to herself, and of which we can know but little except from actual results. But we do know that for its faithful accomplishment her undivided care and attention are needed and required. The home circle, with its ever varying cares and responsibilities; the social gathering, with its many demands and exactions; the claims of humanity and benevolence; and above all, the higher and holier duties of religion—are work enough and to spare for her, whose life has been consecrated and devoted to the service. But, sir, we are called upon to impose an additional burden upon her already over-tasked energy, to bridge over the claims of woman's domestic and social life with the broad avenue of the political world, in which it is claimed she will find other and more enlarged opportunities of usefulness. She, whose empire has ever been the household, who has been the magnet of its attraction, the source of its purity, is to be subjected to the contaminating influences of the political arena. Let no one imagine that she can exercise this prerogative and yet preserve intact that delicacy of feeling which is her peculiar charm. The right to vote implies, in her case, at least, a sufficient knowledge for its intelligent exercise. This is to be obtained by associations with and communications from the outer world, to which she is now comparatively a stranger. She will then have received another incentive to action, and it is fair to presume from past experience, that no effort on her part will be wanting in the accomplishment of the given object. Can this be done without sacrificing existing responsibilities? Are the excitements and agitations of the forum compatible with the wonted serenity of the fireside? Shall the hours at home, heretofore sacred to the reciprocities of affection, be disturbed by the discussion for instance, of the rival claims of the gentleman from Herkimer [Mr. Graves] or the gentleman from Jefferson [Mr. Bickford]. Can we bar out party spirit from our houses when it has once effected a lodgment in the hearts of their inmates? Now we turn from the disturbing elements of political strife and find a sure repose beside the family hearth. But once channel this intervening space between home and the world, and allow the restless tide of life's ocean to enter this hallowed retreat, its calm security will have gone forever, and the refreshing and ennobling influences that once gave it beauty and attractiveness will be ours in memory only. It is said by those who support this theory that to refuse woman the ballot is to degrade her, because it deprives her of an inalienable right. If inalienable, then a natural right. But when



did this right originate? Is it coeval with her existence, or was it derived from legislative action? This question has been so ably and so thoroughly discussed by eminent gentlemen on this floor, that I need only refer to it and pass it over. I wish to state, however, that the earnest advocate of female suffrage in England, John Stuart Mill, in a speech, a copy of which has been laid on our table, is reported to have said, as follows:

"I do not mean that the suffrage, or any other political function, is an abstract right, or that to withhold it from any one, on sufficient grounds of expediency, is a personal wrong; it is an utter misunderstanding of the principle I maintain to confound this with it; my whole argument is one of expediency." The honorable gentleman from Richmond has by his amendment taken a broader ground even than the great English liberalist. But in what aspect of the case can the denial of this right to woman tend to degrade her? Does not the degradation rather consist in its exercise in a coming down by her from a superior height to the broad level of masculine equality? The honorable gentleman from Richmond refers to European history, and also to the English government, under which woman may hold office, and where she may be Queen. Yes, it is true, England may boast her solitary Queen, but America reckons them by millions. Is it not a serious matter that woman should be willing to surrender her present pre-eminent position for to her, such an insignificant bauble as the ballot? She may do it, acting under the delusion that the act will not compromise her female delicacy or propriety. But she will find in the end a regret as well deserved as it is unavailing. Let her for once forsake her true sphere, and leave the orbit which the Great Artificer has designed for her, you will see her blaze and dazzle for a moment in the political horizon and then fall like a dead weight upon the body politic. We cannot violate the well-established usages of popular sentiment without incurring the penalty. It has been said that woman is not represented in the government. If this be so, then history is a fiction and our national character one of spontaneous growth. But who that is familiar with the history of our government would for a moment assent to such a proposition? Woman not represented in the government! You will find the impress of her influence in almost every department of it. Need I refer to the period of the revolution and of the late rebellion, to see how she cherished and nurtured our patriotic zeal, and quickened the spirit of freedom both in camp and council. The eloquent utterances, the soul-stirring appeals, the sage advice, the self-denial, the sacrifice, the valor, all had their first germ in some mothers' heart ere they were engrafted in the hearts of her sons. Woman not represented in the government? She has daguerretyped her image and wishes in the heart of every representative. She moulds the character of man at a time when it is most impressible and the fault is her own, if she does not fashion it to her purpose. Who can estimate the value of that influence that hovers over us with the dawn of intellect, giving tone and character to every thought and act, that

becomes, as it were, a part of the very atmosphere we breathe and ere we are aware, it has laid the foundation of our manhood. Yet, all this, we are told is as nothing; that woman's ambition is still unsatisfied; that she aspires to vote, and then, as a necessary consequence, to be voted for; to represent as well as to be represented. This will be the inevitable result if the present restriction upon suffrage be removed. He who chooses to make woman an elector must be prepared to welcome her among the elected. Does not every instinct of our nature revolt at this? Let us be true to ourselves and to those we are here to represent in expressing our unqualified disapprobation of the proposed change. To use the language of the report: "An innovation so revolutionary and sweeping, so openly at war with a distribution of duties and functions between the sexes." In doing this, we shall have the fullest assurances that we have not trammelled or circumscribed woman's influence, but on the contrary have kept it from being diverted from its legitimate source. We also have the satisfaction of knowing that those who have petitioned for this right constitute a very considerable portion of the class to which they belong. They are not a tithe of the female population of the State, and as such can hardly be said to represent the wishes of the majority. Let us cultivate and evince, if that be possible, a higher respect for woman as she is, and the noble work in which she is engaged. Let our appreciation be of that discriminating character that shall readily apply the test of true womanhood to its counterfeit. We shall thus lend our co-operation and best enable her to fulfill her glorious destiny. The claims of society will be fully satisfied and the record of her life well spent, unmarred by spot or blemish from the political world.

Mr. CONGER.—It was my expectation, Mr. Chairman, to have presented to this committee at an earlier day, some leading thoughts on the great subject which occupies its attention. I had hoped that I might be able to show that this subject could be raised above the range of partisanship, that it might be placed beyond the vortex of prejudice or passion, and that it might be viewed calmly and intelligently by the representatives of the sovereigns of the State of New York. But I find, I seem to linger upon the scene, coming so near the close of this debate, and almost regret that I have ventured to detain the committee at so late an hour, and especially after I have listened, as no doubt all have listened, with such fixed attention to the scholarly effort of the gentleman from Richmond [Mr. Curtis]. It seems to me as if a voice intruding on the scene would tend to break the charmed circle of those winged words with which he urged his plea for the women of the land. Far be it from my purpose if I had the power to dispel the rapt and glorious charm which invested his effort. As a wreath rising in the early spring day ascends with a quiet majesty until it reaches the upper air, so may the record of his brilliant words rise as it were on the potent spell of his eloquence, until it bears another laurel to his early and deserved fame. Mr. Chairman, it is my purpose to view this subject as it is historically presented in the various

departments of political, moral and social rights. I may, perhaps, trench upon the domain of science or call in requisition what has been said in modern times to teach us what our duty as humanitarians justly is. If the disquisition shall be dry; if I shall summon to my aid some statistics drawn a few days since from the musty census of the State, I pray that the committee will bear with me, and yield not only the courtesy with which I have been uniformly treated, but the patience which will enable me and it to go through what otherwise might seem a labyrinthine task. I view this question, sir, as a simple question of the demission of sovereignty, not its dilution, as is sometimes said, to individuals of the same class nor as has been proposed the transposing or confusion of the social sovereignty of this fair State with its political sovereignty, but I look upon it as it must be viewed by the people, and will be presented on the final vote passed by this Convention, as a simple untrammelled attempt to divest the sovereigns of the State of New York of the high and majestic function which they now possess. However others may look upon the right of voting, I have never been able to view it in any other light than as the exercise of the highest sovereignty known to humanity, and I was somewhat surprised when I looked upon the report of the committee and examined the views presented by the majority as well as the minority, to see with what sedulous skill the effort was made by the majority to add to the sovereignty of a class of another blood, while a no less insidious skill was displayed to take from the sovereignty of those who are flesh of their flesh and bone of their bone. I must say that I did not like altogether the jesuitical effort of substituting one figure for another (30 for 10) by which a large number of citizens who had trusted in the public faith of these United States for five years, were to find their trust, and their hope, like apples of Sodom, in their mouths. I do not wish to criticise with unkindness the effort as presented by the chairman of that committee to accomplish what may seem, to some, to be a mere political result; but, after all, there was this simple fact: the baton of his skill was reversed when the sovereignty was to be given to the black man. But the same baton was presented as the arm of justice against those unfortunate beings who, sharing with himself a few years back the right of sovereignty, of this State, were to be deprived of it, forsooth, because by some infelicitous act of their own, some peculiar unfortunate combination, they were no longer able to provide for their own support during the few years that must elapse before they go to their graves. Moreover, I beg leave to say, I could hardly understand how a gentleman of that committee who rose a few days since in support of the report of the majority, could have persuaded himself that this same result was essayed in the Constitution of 1846. If you will remember, as I think he said it was the purpose of that Constitution to effect the exclusion of this very class. The gentleman must have forgotten, it seems to me, that that section from which he quoted, commenced with these emphatic words, "for the purposes of voting." How then could he have pretended that what followed, as regulating the

residence, should divest the very right that was sought to be protected?—how could he so divest by legal construction of this clause to say nothing of his refusing the concurrent testimony and practice in this State from the adoption of the Constitution to the present time? How could he have ventured to tell to this Convention that it was the primary object of that section in the Constitution of 1846, to deprive those very persons of the right to vote? If his logic was good for anything, where was the soldier, whose residence was not to be lost by his going forth in the defense of his country? Where was the boy or the youth who had gone to an academy or public school who, like the public pauper was protected under this very article for the purpose, as it was clearly expressed, of giving him his vote. Now, Mr. Chairman—

Mr. CHESEBRO — With the permission of the gentleman from Rockland [Mr. Conger] I would move that the Convention take a recess until half-past seven o'clock.

The CHAIRMAN — The Chair is of the opinion that such a motion cannot be entertained in Committee of the Whole.

Mr. E. BROOKS — I move that the committee do now rise, for the purpose of moving in Convention for a recess until half-past seven o'clock.

Mr. CONGER — I will say in regard to the motion, that I hold myself entirely at the disposition of the gentlemen who are here present, but that unless they desire a recess for their convenience (as I ought to say in all frankness that I shall take some time in my remarks) I will go on or will yield as shall be desired.

Mr. E. BROOKS — Those gentlemen who are present certainly would like to hear the argument of the gentleman, but would like to avail themselves of a short recess when members now absent will have returned. I will make the motion that the committee do now rise.

The question was then put on the motion of Mr. E. Brooks, and it was declared carried.

Whereupon the committee rose and the President resumed the chair in Convention.

Mr. ALVORD from the Committee of the Whole reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on granting leave, and it was declared carried.

On motion of Mr. E. BROOKS the Convention took a recess until half-past seven o'clock.

#### — EVENING SESSION. —

The Convention re-assembled at half past seven o'clock.

Mr. SILVESTER moved that the Convention adjourn.

The question was put upon the motion of Mr. Silvester and it was declared to be lost. A division being called for it appeared that no quorum was present.

Mr. SHERMAN moved that the roll be called. The SECRETARY proceeded to call the roll, which also showed that there was no quorum present.

Mr. ALVORD — I move that the officers of this Convention be directed, to proceed to the various hotels and desire members to appear in Convention.

The PRESIDENT — The Chair would inform the gentleman that officers have already been sent in search of members.

Mr. E. BROOKS — I move that the Convention now resolve itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage.

The PRESIDENT — It appearing that there is no quorum present, the Chair is of the opinion that the motion of the gentleman cannot be entertained.

Mr. GOULD — I move that the Convention do now adjourn.

The question was put on the motion of Mr. Gould, and it was declared lost.

Mr. ALVORD — I now renew my motion in reference to directing officers to go in quest of delegates.

Mr. E. BROOKS — I have no doubt, Mr. Chairman, that there will soon be a quorum present, and I think the Convention might as well resolve itself into a Committee of the Whole on the pending question.

The PRESIDENT — The opinion of the Chair is that it cannot be done when it has been shown that there is no quorum present.

Mr. E. BROOKS — I suppose if there is no objection the motion might be entertained.

The PRESIDENT — The Chair hardly thinks that a unanimous consent would constitute a quorum.

Later the following members were found to be present:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barnard, Barto, Beadle, Beckwith, Bell, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Case, Cheritree, Chesebro, Clark, Clinton, Cooke, Conger, Comstock, Corbett, Curtis, Daly, Develin, Duganne, C. C. Dwight, T. W. Dwight, Ely, Endress, Farnum, Flagler, Folger, Fowler, Frank, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond Harris, Houston, Huntington, Hutchins, Jarvis, Kernan, Ketcham, Kinney, Krum, Landou, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, Livingston, Lowrey, Ludington, Masten, Mattice, McDonald, Merrill, Merwin, Monell, Murphy, Paige, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, A. D. Russell, L. W. Russell, Seaver, Seymour, Sherman, Silvester, Smith, Stratton, Tappan, M. I. Townsend, S. Townsend, Tucker, Van Campen, Verplanck, Wales, Wakeman, Weed, Young.

A quorum being present, the Convention resolved itself into the Committee of the Whole on the report of a Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD of Onondaga, in the Chair.

The Chairman announced the question to be on

the amendment of the gentleman from Richmond [Mr. Curtis] to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

Mr. CONGÉR — Mr. Chairman, if the report of the majority of this committee to the Convention should receive its approbation, the application of the test of property as a qualification, in one case, to enfranchise a very small portion of the inhabitants of this State, and its application in another direction, for the purpose of disfranchising a very large portion of those who have been associated with us in the majesty of this franchise; if this report I say, should receive the sanction of this Convention, it would be useless hereafter to advert to the cruelties resulting from the antagonism of races; for such cruelty as this, would be felt and acknowledged by all the civilized world as the remorseless blade of the political guillotine falls, to be without a parallel in the history of a race that makes liberty and enfranchisement its boast and its protection. I turn, however, with great pleasure to the report of the minority of the committee, not for the purpose of examining all the recommendations it contains; but because it affords to the Convention a note of warning against the ruthless assault to be prosecuted upon the liberties of the people. That report speaks to you of the vote that was taken in 1846 and again in 1860, and it very quietly yet emphatically gives you the statement of that vote and the majority by which the sovereign people of this State expressed themselves as unwilling to change their ancient institutions. I have thought it was desirable in order to justify the action of this State at that time, that I should pass in calm review, what that action was, and for this purpose I first propose to you to-night, to ascertain the true numerical value of the vote which was then taken. You do not get the expression of the will of the people from a mere statement of the vote had, because it appears by the comparison of that vote, with other votes, that all the electors did not see fit to exercise their right to the franchise, upon that question. According to the report the vote in 1846 upon the question of negro suffrage, stands: in favor of it 85,306; against it 223,834; making a total vote of 309,140; the majority against negro suffrage being 138,528. At the same time the whole Constitution as proposed by the Convention of 1846, was presented to the people. The vote in favor of it was 221,528; against it 92,446; making a total of 313,974, nearly five thousand more than the total vote on the question of extending the suffrage, while the majority by which the Constitution was adopted was 129,082. At the same time the people of this State exercised their franchise on a question which is more generally supposed to express the popular will, and on the gubernatorial vote you find that Governor Silas Wright received 187,306, while his then competitors, Young, Bradley and Ogden Edwards, received a total vote against him of 218,027. The total vote on the gubernatorial question was 405,333. Suppose we concede that the whole of that vote, which was cast in favor of negro suffrage, was a vote to be taken out of that column which supported Young, Bradley and Edwards, repre-



senting what was known as the Whig and Anti-Slavery party; then if we take that whole vote and subtract from it the entire vote in favor of negro suffrage, you have left 132,721, expressing the Whig vote of the State at that time, non-concurring in the right of negro suffrage. If you take the whole vote which was given on the question of this suffrage from the whole vote which was given on the gubernatorial question, and suppose that the balance expresses the indifference, or the non-concurrence, as a vote of *non-liquet*, you may say that one-half of that difference might be added to the Whig vote of non-concurrence, in order to give a good test of the actual Whig vote that refused to concur on the question of negro suffrage. But if, on the other hand, you prefer to obtain the whole vote non-concurring, take the whole Whig vote as against negro suffrage and add that to the entire vote given on the democratic ticket, which supposes, by the bye that not a single democrat cast a vote in favor of extending that sovereignty, you have a total of 320,027, which represents the number of those who were positively against or non-concurring in the extension of the elective franchise. You will perceive, Mr. Chairman, some one might urge the same objection as to ascertaining what was the true preponderating vote of the people of the State upon the subject of the Constitution itself. Even if that were so, we have light upon this question from the vote taken in 1860. That vote is far more intelligent and a far more definite and commanding expression of the will of the people. I will proceed to give you that vote. For negro suffrage the vote in 1860 was 197,503; against it 337,984, making a total vote of 535,487. At the same time the vote was taken by which Governor Morgan reached the gubernatorial chair, with a majority of over seventy thousand; the vote in his favor was 388,272; the vote for his opponents was 314,653, making a total vote for the gubernatorial ticket of 702,925. If you take from the total Republican vote given for Governor Morgan of 388,272, the vote that was given for negro suffrage of 197,503, you have 190,769 as expressing the sentiment of the Republican voters of the State, now concurring in the measure. If you add to that, the total vote of the Democratic party (for it is conceded in this computation, that the whole vote which was given for negro suffrage was a republican vote, and the total vote against it was democratic); I say if you add to this difference the vote given by the opponents of Gov. Morgan, you have 505,422, as expressive of the vote of the people of the State of New York, as positively against, or non-concurring in, the question of negro suffrage. Now, sir, the census of the State tells us that at that election, only a fraction over ninety-one per cent of the whole vote of the State was given on the gubernatorial ticket; so that you may add by way of correction of this estimate, something like nine per cent on the total vote, which amounts to 63,263, and you have a sum total of 568,685, expressive of the vote of the people of the State of New York in 1860, against this question of negro suffrage, or the vote of the people non-concurring in

the measure proposed. I have no desire at all in stating thus much and in this wise, to take by surprise, or cajole by figures the votes and opinions of the gentlemen of the committee; but it appears to me that a candid review of these figures must teach them a lesson of prudence, which I think is a wise and necessary part of statesmanship. I remember how, in the years gone by, on a question exciting the public mind from one end of this country to the other, a distinguished chief, then President of the United States, urged upon his friends in Congress the settlement of that question, not for the purpose of preventing any expression, but to avoid the necessity of resort to any expression on the part of the people of the country, as either against it or in favor of it; I remember, too, that policy was fatal to his own party, resulting in the reaction of the people of the country as against the question of policy, which they had theretofore approved, principally on this ground—that they had not been consulted, that their views had been anticipated in a way which did not suit them. When I go further back in the history of this country, I remember one whom we all regarded as the wisest man of his day, one of the sagest chiefs of any party, who on a similar question, instead of urging his friends in Congress, who were in the majority, to support his impeachment of the course of the United States Bank, quietly told them to go home and take the voice of the people in regard to it. I see the superior sagacity of Andrew Jackson, and I am disposed to regard it as a fundamental principle in the policy of this country, that it is never wise on a question of grave importance to undertake to anticipate the decision of the people. I never was more surprised in my life, when in conversing with one of the old and tried champions of the democratic party, a man who had attained a high celebrity in this State and held the highest post as a jurist in this land, he confessed that he felt such indignation in view of the attempt to forestall the expression of the people of this country, on a question of so great pith and moment, that he had thrown off the old ties, that bound him to the party of his youth, and went against it, in the expression of the indignation he felt at such a policy. I am disposed, sir, for one, to take this as the lesson of experience and prudence. Whether it affects or determines the action of any other gentleman in this committee, it must determine mine. I am not willing to go to the people of this State after I have computed what was the sum total of their vote, of indifference or opposition to this measure, as some 560,000; I am not willing to assume a responsibility as their representative to say to them: "This is a question we will not submit to you, in your independent sovereignty, as a separate question. You must take it as we make it, you must take the whole matter as we send it down to you, or you must do without anything." Sir, I have but one opinion—that the independent yeomanry, the sovereign electors of the State of New York will rise in indignant majesty and turn upon the men who undertake to trifle with their sovereignty, and say to us: "You have exceeded your trust, and we turn upon



you as men who have been faithless to it." Therefore, Mr. Chairman, I think I am wise, or if not wise, I am at least prudent, in taking the teachings and admonitions of the past, which if it establishes any one rule as a great cardinal rule in administration, it is this rule above all others—that in a country where the people are sovereigns, it is not wise for their agents or representatives to assume sovereignty. I tell you sir, the people of this State, much as they may be cajoled from time to time, much as they may be misrepresented, much as they may be trifled with, still appreciate above all things those great functions with which they have never parted, of the sovereignty of this land. If I have succeeded in impressing the mind of any gentleman with the numerical value of the voice of the people of this State, so lately expressed, I think I have but very little more to urge in defense of the course I shall adopt; when I say that the more recent expression of the opinions of the people—the sovereign people of this State—is of much more value and much more suggestive to us acting here as their representatives, than any vote taken in the times that are past. They voted upon the Constitution and the appendant query presented to them in 1846; and fourteen years later the second time, when the question of extending the suffrage to the negroes of the State was presented to them, they voted against it. They stood up like the barons of old in the presence of King John, "*Nolumus nos leges Angliæ mutari.*" The institutions of New York are not to be changed! And I think that is their candid and enduring opinion at this time. Mr. Chairman, if I were able or worthy in my place to undertake to justify the action of the people of the State of New York—if it should fall upon me, who have had of late so little participation in the councils of the people, and who can only know what they say and what they mean, as one living far away and distant, and taking note more as one who observes from year to year, than from day to day, of the counsels of the people: if it should fall to me this night to undertake to state to you the reasons which support and justify that action, I hope you will give me a very candid and a very impartial hearing, for I do not like—I tell you the truth in all honesty—I do not like to be forced into this position at so late an hour, to undertake to justify the traditional sentiments of the people of this State. I think that work ought to have fallen upon gentlemen representing the majority of the people of this State; they ought to be able to say what the traditional voice of New York is. If it has changed they ought to have been able to have told us why, and how it has changed; if they had any reasonable, any firm, any sufficient data upon which to base any such opinions, they should have presented them to this committee. But nothing of this kind has been urged on this floor. I have failed—and I have listened with great patience—to catch the first intimation of what is the ground of change in the sentiment of the electors of this State. My honorable and eloquent friend from Columbia [Mr. Silvester] thinks those were not the better days that were referred to by the gentleman from Rensselaer [Mr. Seymour], but he thinks

we have fallen in these later times upon the best and most glorious days of the republic. Accepting the position as if it were true, pray, I ask you, did he or any one else, tell us the particulars in which those days were better, or why they indicated any change of the opinion of the sovereign electors of this State? I do not speak now as one who goes beyond his ground, I am not speaking about the opinions of the people of the United States. This is a question local to us. What we want to know is, what is the opinion of the sovereign electors of the State of New York? Why, sir, if we listened attentively to what has been said on this floor from time to time, we would believe that the people of this State, releasing themselves from all the old traditions which have come down, not only from the period of the revolution, but from the days of the first settlement of this colony; that the people had gone back and become advocates and disciples of the doctrines of natural rights and the theory of the "consent of the governed." When and where, Mr. Chairman, in the history of the State of New York, did you ever hear, before this Convention (except, perhaps, in the Convention of 1821), a persistent and united advocacy of the doctrine of natural right? Did our forefathers, when they came to this country come as the exponents of and believers in, or the advocates of natural right? They came as humble citizens of his majesty; they came as colonists, under his protection; they came as citizens of the old kingdoms, and they never aspired until the days of the revolution to be anything else. They came under the protection of settled laws, they never talked about natural rights; and it was only when they were forced into revolution, that they threw out the doctrine of natural right, they did not mean the natural right to go back and form society over again. No, sir, they meant merely the natural right, that when men were down trodden, they would rise in revolution. The doctrine of natural right is simply, as the gentleman from Broome [Mr. Hand] said here, the doctrine of revolution. It is not the doctrine which marks either the progress, or the hope of society. It is a doctrine which speaks of destruction to existing institutions! Away then, sir, with any such theory as the doctrine of natural right! The people of this State never entertained that doctrine. It is only of late years, the doctrine has been proclaimed on our soil, by some teachers of false doctrines from Massachusetts and the like, who have been floating around within our sovereign bounds, who have told us that government is based upon natural right. So, too, some gentlemen will tell you that all government is based upon the consent of the governed. What a monstrous fallacy; what an abominable heresy this is, in this age of the world. Why, Mr. Chairman, when that lamented chief of your party, who registered that oath in Heaven, of which you have a copy registered and on file here in this high court of the people (referring to the language of President Lincoln, inscribed on a scroll on the walls of the Assembly Chamber) "I have the most solemn oath registered in Heaven, to preserve, protect, and defend the government." When he went to take charge of the government

which he was commissioned to assume; when he went to the city of Washington with one million of the popular vote against him, had he the consent of the governed, in the way gentlemen talk to us of the consent of the governed, as a numerical vote? When the people of the South rose up in rebellion, taking advantage of this nonsensical doctrine, and said they would not submit to the government while he was at the head of it; what was the answer, what was the response of the sovereign electors of the State of New York? They said the consent of the people had been constitutionally expressed. They knew enough of law, plain law, to know that a consent may be expressed or may be implied; that no man could stand up as a friend of order and of society, and say in that day, that this government rests simply upon the consent of the governed represented by a numerical vote. Why, what use is the Constitution of this State if these doctrines are to govern? We shall have a democracy fast verging on mobocracy. There is no such possibility of doctrine under a constitutional government. Then we have another doctrine. Another doctrine has been quoted on this floor, and I confess to you, believing in that doctrine and its right application, as I do, and accepting it as the rule of my life, I was pained to have the doctrine enunciated by the Redeemer of mankind, brought on to this floor as a cover of political fallacies in government. We were told by a distinguished jurist on this floor, that we should do unto others as we would that others should do unto us, and, therefore, that is the great reason why the people of the great State of New York should demit their sovereignty to those who make application for it. Sir, is there any greater absurdity in this world than to undertake to use the cardinal principle, the plain and unvarnished doctrine of Christian ethics, and to make it play such a part as this, to work the destruction of society on questions within the political arena. Suppose the distinguished gentleman who broached that doctrine on this floor should go with it to the other side of the Atlantic, and present himself before Her Majesty; suppose he should take that doctrine and set it like "apples of gold in pictures of silver," or if he wish to ornament it let him make each letter a burning gem till it glisten with a brilliancy beyond that of the Koh-i-noor, and present it to Her Majesty as an expression of his opinion as a political doctrinaire, and ask Her Majesty to share the sovereignty she holds from the people of Great Britain with him, on the basis of that doctrine, and by virtue of the force of that command, would he escape a straight —? But I hope Her Majesty would give him a very quiet and very candid answer — "This [trust which I hold I have received from my people, and I never can demit or share it." Then, sir, when the christian electors of the State of New York are brought in council here, and it is urged upon them on the fundamental doctrine of Him whom they make their guide in religious matters, that they should share their sovereignty in this matter with those who do not participate in it, what is the proper and sufficient answer that these electors make? "This is a sacred and

holy trust that we have received from our ancestors. This trust we must maintain in its purity: this trust we propose to exalt in its majesty: we cannot demit it." I am one of those, Mr. Chairman, who do not hesitate to say that government is ordained of God; that it is not an invention of man, although a necessity for it exists, yet it has a higher and superior source for its authority. And when I say that, I say it intelligently, for I know that it is coupled with a sacred trust, and that those who received from a spiritual power this trust of government, are bound to execute it in accordance with the terms of their trust.

Mr. M. I. TOWNSEND—I would like to ask the gentleman [Mr. Conger] a question. Does the gentleman consider it wrong to govern one's political conduct by the word of God?

Mr. CONGER—If I thought that question was worthy of a categorical answer, I would give it; but I do not see Mr. Chairman, that that question is anything more than a delusion and a snare to the gentleman who puts it, for, if he has followed me in the argument I have given, I think I ought to have convinced him by this time that he could not apply that doctrine in the matter of any trust. Suppose he has the trust of a few infants, and some one comes along to him and says: "I plead this doctrine of our Lord and Savior Jesus Christ, and I ask you to share that trust with me, because I am a man and a brother." What is the answer the gentleman gives? "This trust is mine, committed to me solemnly and I cannot demit it." I wish to place this trust which God has reposed in the sovereigns of the State of New York, where it is, on high and lofty ground, and I wish the sovereign electors of this State to act and execute that trust in accordance with every doctrine which humanity, political morality, and sound policy demand. If I was standing on this floor to-night, sir, simply to advocate the doctrine of a party; if I was here as a political doctrinaire to enunciate some new thing, then I think I might be questioned; then I think it might be proper that you should sound the depths of my faith or the wisdom of that I announce. But I am here simply to say to you to-night, what I believe the sovereigns of New York believe, the doctrine they hold. If you question the grounds of their faith go to them. I am not responsible for the faith that is in them. I only propose to-night to give you just that which I accept and believe to be historically true; that the people have very high and glorious conceptions of this function of sovereignty. You can go to a man on the other side of the Atlantic, and he can talk to you about the privilege of voting, but does that privilege of voting make him a sovereign? When you come to this glorious State of New York, the man who puts his ballot in the box knows he is a sovereign by the grace of God, free and independent. It is the sovereignty, sir, that is in him that I am here to interpret and vindicate, and, I trust shall be able to do it. Now, then, Mr. Chairman, the people of the State of New York are historically possessed of certain information. They know certain things about these questions; they may not, all of them have their

knowledge from books; they may not, like the honorable gentleman [Mr. Curtis], be read in Lord Coke, Blackstone, and with all the wisdom of Story to back them; but the knowledge they have is traditional, they have got it from the fathers of the revolution; from the sages, the political guides of the people of this country in times that are past. They know what equality before the law means; they know that a man is equal before the law when he is entitled to the protection of the law; they know that the child is equal before the law; that the woman is equal before the law, and that now, the freedman is equal before the law. Equal in what way sir? Equal in his claim for the protection of his life, liberty and property; equally amenable on the other hand to the laws of his country, so that if he violates any of them, he has nothing to say, he is equal before the law. But there is not a gentleman in my audience that does not know that that equality before the law does not make him an equal participator with me in the sovereignty I enjoy. The people of the State of New York also know that which their ancestors knew, that a man may come to a country and have a right of sojournment in it; that as a sojourner and guest of the country, he is entitled to certain respect and to the enjoyment of certain rights. Mr. Chairman, when we remember that this is a christian people; when we understand that these people know something of the Mosaic institutions; they know what it is to be a sojourner in a strange land; they know a man there may remain a sojourner from his birth to his death, and not acquire any rights in the country, except those conceded to him by the laws of the land. The mere effect of sojournment in a strange land is not to make a man a citizen of that country. They also understand that the children and the wives the engrafted stock and the branches of their family have certain rights—rights in common with them as citizens of this fair land. They also know this doctrine, that there are two kinds of citizenship in this country; that two kinds of citizenship have always been known to men of the Anglo-Saxon and Hibernian blood and lineage. There is a citizenship of him who is born free and entitled under the law only to certain privileges, and there is a citizenship of him who being also born free, is yet one of the sovereigns of this land. Years ago, sir, in the early history of Great Britain there was but one sovereign; years ago there was no voice heard that Parliament was sovereign, and even now, although you announce the doctrine of the sovereignty of Parliament, you know there is a power in that country that will check it. Much as England may boast of its institutions, all that can be said of it is, that it is a government of blended sovereignty; it is not an absolute monarchy, nor is it a pure republic like ours. There the sovereignty is divided; there is a partial sovereignty in the people, and a higher sovereignty in her who sits upon the throne. In this country we have no such doctrine. The free born electors of the State of New York are its sovereigns. They are sovereigns by the same right and title that her majesty

claims to be the sovereign of Great Britain; their sovereignty comes to them by inheritance and under law; but there is no one to share that sovereignty except those that they permit to share it with them. Their children may grow up to be heirs of this same glorious covenant with them, and those who may be invited to this land; and who go through certain requisites, may also share this sovereignty with them. But that you must remember is always on invitation of those who have it originally, extended to those who come here and embrace certain conditions. It does not come to the naturalized man as of right, it comes to him by covenant. The people of this State, therefore understand that there is a citizenship which means magistracy, judicial, executive, representative, and supreme magistracy. They know there is another kind of citizenship which merely means a right to an inheritance of that sovereignty when the time may come, according to the institutions of the country, a right to enjoy certain privileges of the land, and the people of the State of New York understand that by the organic law of this land. Need I say to you that this is recognized in the Constitution of the United States, the difference between the citizenship of the land and the political sovereignty in it. Why, sir, if they had been one and the same when Congress passed the original provision that citizens of one State should be entitled to the privileges and immunities of another State, why did not they undertake to say who should vote and who should not, as the test of political sovereignty. You know perfectly well they did not dare to trench on the rights of the people of the States in regard to this question, but they simply adopted a rule that those who were entitled to vote for members of the lower House of a State, should have the same privilege to vote for members of the House of Representatives in Congress assembled. There is no conflict—no conflict was attempted. But the distinction is clearly maintained in the Constitution, and has been maintained unto this day. Does any gentleman ask me to detain him at this time to refer him to Blackstone for authority on this question? Must I go back to Aristotle, to show that in his day the clear distinction was recognized by him, that citizenship was divided; that there are two kinds of citizenship. Let us see what the Stagirite says very briefly, remembering that he, of all other men, that have written on this subject has given the highest definition of a republic—a definition which I wish in this day we could say we really enjoy:

“A government administered by the people at large, but administered with justice; not oppressive to any class of citizens, but impartially consulting the good of all.”

Mr. M. I. TOWNSEND—Will the gentleman from Rockland [Mr. Conger], allow me to ask him a question?

Mr. CONGER—Yes sir.

Mr. M. I. TOWNSEND—I would ask the gentleman whether he believes it more becoming to quote Aristotle in this Convention, than to quote the sacred Scriptures?

Mr. CONGER—I will leave the gentleman



from Rensselaer [Mr. M. I. Townsend] to answer his own question. I read from Aristotle as follows: "There is nothing that more characterizes a complete citizen than having a share in the judicial and executive part of the government." Now, sir, there is an organic idea running down from the earliest period of republican governments, given to you by a man that lived 350 years before the Christian era, and it has come down through all time, permeating every country and every land where republican institutions have been established and acknowledged. It is no new idea, it is not an idea that the people of this country originated; it is an idea that they received as a common inheritance of humanity, and it is an idea which I trust will last until the last syllable of recorded time. Now, Mr. Chairman, if I have made clear what views the people of the State of New York entertain on the general question of sovereignty and citizenship as connected with sovereignty, and the distinction that exists between that kind of citizenship and other kinds of citizenship, I am prepared to draw your attention, very briefly, to the question presented this afternoon, by the gentleman from Richmond [Mr. Curtis], in his eloquent address. No man can appreciate more highly than I do the beauty and the power of so eloquent an argument. But looking at it as a work of art, I find it is subjected to some of those conditions which always pertain to those works which we class above others for the elegance and power of their artistic expression. For it not rarely happens in examining a work of art you find that no little labor has been bestowed in some special direction, and in looking still further you find that the principal aim of the artist has been to hide and cover up some defect, either original or newly discovered. I will not trouble you with other instances, but you are aware that not unfrequently, when a jewel of great value is given to an artist, his great work, his chief aim is, in case there is some natural defect in it, as far as possible by the beauty and skill of his workmanship to hide it. I would not venture, sir, in the presence of this committee, to undertake to break up or analyze, or, on the other, put together again so clever a work as that of my honorable friend. All I ask is the privilege of casting a side light upon it, and perhaps I can discover the flaw, although it has been most artistically hid. Now, in regard to the argument presented by the gentleman from Richmond [Mr. Curtis], there is this very plainly to be said: If you admit that society is based upon man as an individual; if you concur with the learned gentleman and the disciples of his school, then you must concede all that follows from their premises. If you adopt the philosophy of Condorcet, and his school, if you take the French theory of man and society, I think you must follow legitimately the deductions based thereon, even to the verge of French libertinism. When the gentleman quoted to you this afternoon, the authority of the distinguished Mill, I should have been pleased if it was possible for him to say Mr. Mill was not a disciple of that school. Why, sir, the authority of Mill's name is no greater or higher authority than that of the Westminster Review. Although there is to be conceded to him superior advantage, both in the talent he possesses by nature, and the manner in which he applies it, yet, we may not receive his advocacy of any system to destroy or tarnish a cardinal doctrine of society. The doctrine of that school is in direct antagonism to the doctrine which the people have received, and which they have been taught. And if the gentleman from Rensselaer [Mr. M. I. Townsend] will pardon me now for quoting the doctrine they received from the Bible—there is nothing more clearly taught by that Bible, and there is nothing more clearly to be accepted by every reasonable man than this simple enunciation, that society is not made up of man, but is made up of families. The family is the unit, the *monad* of society; and not man. If there are any who would question the divine authority of such a doctrine, or of the book in which the doctrine may be traced, I ask him if he can conceive for a moment, society as existing anywhere except in connection with the family. Was there ever in the pre-historic periods, a supposable case where society existed made up of man as a unit—man as a monad? No, sir, there is not a sentiment which we have on the subject; there is not an intuition which we may derive from the doctrines of revelation, or of the law of necessity, that does not concur in teaching us these plain simple propositions—society is made up of families; in society the family is the unit. Now, sir, if that be true, is there any difficulty in receiving the other doctrine that the man is the divinely constituted head and representative of the family? I know it is customary now-a-days to sneer at these doctrines, and I regret extremely to have a doctrine of such universal respect and authority with the people of this State, spoken of so lightly at some meetings which were informally held in this hall some weeks ago: but I am convinced of one thing, that the sovereign christian people of this State regard that doctrine as one of the corner stones of all modern society. So that on that question, if you concede my premises, there is no difficulty in coming to my conclusion: if you concede the gentleman's premises, I think you are bound to follow him to his conclusion. If it be true that God made man and woman and decreed that they twain should be one flesh; if it be true as a philosophical proposition that man is not a perfect animal without woman, and that the one is the complement of the other, in order to represent the generic idea of man in society; what is the use of recurring to the doctrine of natural rights in order to show that woman has a natural existence in society independent of and anterior to this law. But some will say that the woman as an individual should be protected. Certainly. Is she not protected? They pretend to say that under the common law some of her rights were very sedulously withheld from her, and I was astonished to perceive that no allusion had been made in the whole discussion upon this subject, as far as I could hear, to the authority that had always been claimed for the court of chancery in Great Britain and for the court of chancery in this State. Where will you find a more perfect protection of woman as married, in all her rights,



in every single particular, than you find in the court of chancery of this State? When you come to the law which was passed in 1848, and modified as I understand in 1860, can you say reasonably and with wise regard to the legal proposition, that woman is better protected now in her rights, and in her property, than she was under the decrees of the old court of chancery? Why sir, it has been said on this floor that it has come to this; that when a wife owns property, it is a sort of *prima facie* evidence that her husband is utterly worthless if not worse. And if that be so, then simply the wife under this modern legislation has been reduced to the sad and deplorable level of being a protection to her husband in his wrongs upon society. But admitting that some modern statute or some application of the civil law, may have made some progress on the common law, which proposition I will not dispute; if it were a question presented to any father in this land, how he would protect his daughter in case she was likely to make an unfortunate marriage—would he be willing to throw her upon the rights secured by this modern statute, or would he not feel it to be an indisputable duty to protect her by the old fashioned form of a trust. Whether this be so or not—and I am not prepared to offer any authoritative opinion on this subject—has woman really gained anything by the agitation of this question? And that leads me to this other question: Is she likely to gain anything in her real interest by the agitation of this other question? Has it ever been so in the history of society? Go back to those periods when the Roman matron made a positive effort to establish a right in the State as antagonistic to the right of the husband. Go back to the Augustine age, if you please, when the law, which I think was named *Lex Pappia-Poppæa* was established, which called upon certain men of the nobility of Rome and obliged them to marry women at an early age, in order that they might hold certain offices in the State. Was there any benefit gained either to the community, to the Empire or to the Roman matron? She was degraded by such a law as that—almost as low as the reluctant Senator who was frequently driven into marrying a child of four or five years of age. But not to detain you, sir, in other matters, the historian records that this was the commencement of the decline of good manners in that Empire, and that by slow and insensible but sure degrees, the Roman matron sank from her high estate, and although at that time a hen-pecked Senator had to go to propitiate the Goddess *Viriplaca*, yet after all her fate was sealed by the very antagonism presented in the law of the land, as between herself and the marital race. I cannot hope for any good to result to the matrons of this land from a similar policy in legislation. To me, it is a revolting and I presume an abhorrent idea to most of the members of this Convention. If I were to talk seriously to any of those who have advocated this doctrine, not so much on this floor as elsewhere, I would like to ask them this single question—whether, to their minds, the dignity of her who is known as the mother of Washington, would have been ad-

vanced at all, in their estimation or in their judgment, had she, in her day, been classed with the political body, and had the power of voting? We form all our judgment on such questions, not so much from the logical statements made in regard to them, as from our intuitions. The feeling a man has to his wife is the reflex of that sentiment which, as a son, he had to his mother, and the attempt to destroy the relation between the husband and the wife, or to take her from the position which she properly occupies, is partly an attempt to destroy the estimate which the son has of his mother; and I am convinced that in that light no candid mind is willing to try the experiment proposed. But I suppose it is due to the committee that I should pass more rapidly to some other propositions before it, and devolve this subject, farther than I have essayed to open it, to those who can best investigate the yearnings of human instinct in the breast of man to carry the woman whom he has made the partner of his life, to, and secure for her, sovereignty in the social scale as her true realm and noblest dignity. I must pass, Mr. Chairman, now to the consideration of other questions before this Committee, and I will introduce what I have to say by a direct reference to the proposition advanced by the gentleman from Oneida [Mr. T. W. Dwight], who is better known to me, and probably to most of this Convention, as a professor of law of high repute in the city of New York. That learned gentleman undertook to lay down to this Convention the other day certain qualifications, five in number, as a test for some rule which he thought was sufficient to meet all the exigencies of the case. I would not like, at so late an hour, or in any ungenerous spirit to say that such a division as he has laid down, would hardly serve the purposes of a calm and elaborate exposition of the matter in a text-book because the classification was bad, some of its heads being those of inclusion while some others were heads of exclusion. But it is sufficient for my purpose to draw the attention of the committee to that which he seemed to make the principal guide of his own views and the test of propriety of action in the matter of extending negro suffrage and that was simply this—the incorporation into the mass of society of that 'class' of inhabitants. I wonder that the learned gentleman had failed to perceive that in the very statement of this as a test, he had virtually begged the whole question. He had not presented it except under a learned title in any other phase than that, in which it had always been presented to the intelligent jurists of this land. Why, sir, if he had incorporated at any time into the mass of the contents of his stomach some indigestible matter, he would have paid the penalty demanded by the laws of nature, and he would not have received the commendation of his physician. The incorporation into a mass in order to mean anything applicable to this case, implies an assimilable element; and had the forefathers of this nation seen a possibility of incorporating the negro into the mass of society, as an assimilable element, do you suppose they would ever have retained him in slavery? I am not here, to-night, to justify that institution, for I never did; but the test of the honorable gentleman is not presented in any sufficiently logical form in

order to assist us in our investigation. The actual condition is one of hotch-potch, and not a true incorporation into the mass of society. If I were disposed to treat that proposition at all pleasantly, I would say that such an incorporation as that should receive an especial charter; for the reason which the present Constitution assigns that its object could not be attained under a general law. [Laughter.] Because, if there is any general law by which we can incorporate this race into our society, and make it an assimilable element, I would be obliged to the gentleman if he would show the way. Mr. Chairman, I wish to state what I suppose to be the views of the christian people of this commonwealth plainly, intelligently and fairly. I believe that it is the desire and the purpose of the christian people of this State, who I suppose represent the majority, to regard the negro just as he is to be regarded under the authority and sanction of that book which they receive as the guide of their life. It is no new thing in the history of this State that its christian people receive the black man as a fellow-christian, and it is too late, and it is unnecessary to go to the people with any idea based upon the ordinary views of his exterior, and tell them that psychologically he is not a man. No one receives that doctrine I suppose. But I have not heard that doctrine announced on this floor. That as a man he is capable of being christianized and educated, no one, I believe, in this State really doubts. But after all, that is not the question. I think, sir, we should view this in the light in which humanity presents it, that if we believe the negro is not capable of a true physical as well as moral improvement in this State of New York, we should be candid enough to tell him so. When we invite foreigners to come to this land, it is because we hope that they will be so incorporated into the mass of society, as to prove useful citizens and members of the social state. But how can any person regard the future status as it is really presented, as a practical question, supposing the negro can be incorporated into the mass of our society in this State? Now, sir, I have taken the trouble to procure that map [referring to a map of the world, showing the isothermal lines across the two continents], which is the only protest the scientific mind of this country can give against certain attempted practices to be enforced upon the people of this State, in regard to the future status of the negro. This map is prepared by the Department at Washington, for the purpose of showing, by certain lines drawn across from the old to the new Continent, the lines by which the citizens of the old world can safely emigrate to this country, and the belt of land within this country, which can make a home as safe to them in point of health and development as the home that they left. Ordinarily we supposed that all those in either hemisphere who dwell on the same parallels of latitude, are capable of passing from one country to another. But those lines teach a far different and a wiser lesson. You can see how the inhabitants who left Great Britain and the northern sections of the Continent, and came to this country, deviated very little from the line which science has taught. You can

see how they came along that isothermal line at 50°, and landed in the State of New York or a little northward into the State of Massachusetts. You can see how the citizens of the lower section of Europe traveling along the line marked 60°, find their natural home in the southern part of this Union. But not to dwell upon this matter, it is sufficient to show you where the lines that run from the Continent of Africa express themselves on this side of the Atlantic, and it is very surprising that science should have developed the fact that there is no portion of this State of New York which can ever be a true home for any original citizen of Africa.

Mr. AXTELL — Will the gentleman allow me to ask him a question?

Mr. CONGER — Yes, sir.

Mr. AXTELL — In what manner has science developed the fact?

Mr. CONGER — These lines are traced from Continent to Continent, by careful observations made by the most scientific minds on either side of the Atlantic, in determining the question of heat, and they are mostly expressions of the medium temperature of the countries in which the observations are taken, and these lines express the mean actual temperature from year to year. I do not mean to say that with reference to these lines it would not be safe for a citizen of Great Britain to go down below the 70th isothermal parallel to make it his home. But we very well know that if he goes as a laboring man, he can neither enjoy health or secure to himself a strong constitution. And just the same law, the same necessity forbids us going two or more lines above, if they were traced on that map and taking our home in the arctic regions. If you trace the lines which mark the continent of Africa from 70° to 70°, you see that they are expressed on this side from the north line of the north of Mexico, down to a point in South America just below the Brazils. And the meaning of all this is simply that the American home of the African lies between these lines. He may go ten degrees above it, but if he goes twenty degrees he goes at a considerable risk of all the effects that must necessarily follow in the change of his constitutional vigor. But, when you propose to the negro that he should come from his native climate, or coming from the South, ten degrees above his natural range, should come here and make it his permanent home, I say you make a proposition to him which is against the laws of God, clearly traced and expressed on these two continents. I have no proposition to make in regard to what portion of the United States might possibly be a home for the African, where he could develop himself, and increase his constitutional vigor. My friend from Columbia [Mr. Gould] talked the other day about "brain culture," and, while I have not the time to pass any criticisms on that subject, you perceive that even if you admit his theory it is perfectly impracticable, if you put a man where he cannot develop his body and maintain a good constitution, or secure an average duration of human life. But some gentleman will say, in response to all this, "the negro does live in the State of New York." The practical question that really comes before

the people of this State is, how does he live? What are the statistics which your own census give you on this subject? Do they show that the negro is capable of increase here? Has he increased, and if so, why and how? I will not detain you with all these particulars; but I have taken the trouble to look at the United States census from 1790. You will find that the population, free, colored, and slave, increased from 25,978 in 1790 until it reached its culminating point in 1840 to 50,000. Now, take that population sir, in 1840 at 50,000. If it had increased according to the laws which marked the white population of the State of New York at that time it would have increased at the rate of two forty-one one hundredths per cent each year, and that would have given you 80,000 negroes. What is the fact? Instead of the negro population of the State of New York being 80,000 you find your census in 1865 puts it below 45,000. How will you account for this difference between what would have been his natural increase and the positive status of the population? —

Mr. M. I. TOWNSEND — Will the gentleman repeat his last statement?

Mr. CONGER — Had he increased according to the annual rate of population, the lowest in the State of New York for the white population during a period —

Mr. HAND — I would ask the gentleman if he cannot perceive that that difference consists in the acquisition of foreigners to the white population?

Mr. CONGER — I am not giving the gentleman the per centage of the black population to the white. I am giving him the absolute numbers.

Mr. M. I. TOWNSEND — What was the last amount of the population — 50,000?

Mr. CONGER — The colored population of the State of New York in 1840 was 50,031. The population in 1865 was 44,708.

Mr. LUDINGTON — May I ask the gentleman a question, whether he does not know that by reason of the Fugitive Slave law in 1850, some nine thousand of them fled from the State of New York into Canada, as he will see by the census of that year?

Mr. TAPPEN — I think I can afford an explanation by asking my colleague [Mr. Conger] a question. I would ask him whether the present census of 1865, was not taken by a gentleman who then was Secretary of State, Mr. Chauncey M. Depew? [Laughter.]

Mr. CONGER — The census of Canada shows in 1850 a colored population of about 2,000, and in 1860 less than 9,000 more. But perhaps it would be more satisfactory to the committee that I should run over all these figures. In 1790, the sum total of the black population was 25,978; in 1800, 30,717; in 1810, 40,350; in 1814, 38,094; in 1820, 40,068; in 1830, 44,945; in 1840, 50,031; in 1850, 49,069; in 1860, 49,005; including 3,313 blacks and 382 mulattoes that were of foreign birth. So that in 1860 there were only 45,000 that were born in the United States, and residents of the State of New York. Now, sir, if you will take the trouble to look over the percentage which marked the increase of the white population of this State, you will discover that the lowest rate we had for many years was 2 41-100, and

that would make the natural increase of the black race in the State of New York, from 1840 down to the present time, 30,000; so that the last census instead of giving us a population less than 45,000, should have given us a population of 80,000. Supposing that there was a mistake in the late census, as suggested by my associate from Westchester [Mr. Tappen]—suppose the population of the black man shared the same misfortune which the population of the city of New York and the county of Kings shared, by which under that estimate instead of gaining anything either by a foreign increase or by a natural rate of increase, they made a positive loss—suppose that the true colored population of the State of New York in 1865 was 50,000, you have got to account for 30,000 according to the law of increase which determined the white population of the State of New York. I shall not ask the gentlemen of this Convention to draw upon their own private knowledge in regard to the unfortunate fate which has everywhere attended the settlement of the negro within our State, about which I have been told from time to time by gentlemen who are in and out of this Convention, that there is no question whatever, in order to show that the negro race cannot maintain good health or a vigorous constitution, or live to old age, in this climate of the State of New York, and under the institutions of the State. Now I put this simple question to you, whether you can as a christian people, in obedience to the laws of humanity, propose to the negro that he shall make the State of New York his permanent home in such a way that if he comes and settles here he should become a citizen? When you invite foreigners to come to this country, it is because you believe that if they come and settle with you, they will promote not only your own material prosperity, but enhance their own. But, in the case of a negro, the census returns collected by your own State, as well as the United States, show that no such result is possible for him. I think, therefore, sir, we are justified in saying that humanity requires at the hands of the intelligent white race in the State of New York, that they should say in all frankness and in all kindness to the black population, "You can never be permanently and advantageously located in the State of New York; you are destined, by the laws of nature, over which we have no control, to be sojourners in this State." If that be so, sir, it is no violation of the great principles of Anglo-Saxon law which recognizes a distinction always between denizens and citizens. But suppose you entice the negro and ask him to come here now, by the voice of this Convention, to be a permanent citizen of the State; you offer him a home, sir, and what do you give him? You give him a grave. You furnish no true and just facility for his increase, or the increase and development of his family. You offer him liberty and political rights, but after all, practically, if these census returns are true, the liberty you offer is the liberty to die. I had designed to illustrate and confirm this view by other matters and facts that I had collated from the census, and by considerations drawn from his physical type by which the negro can never be amalgamated with the superior race



without moral degradation to both and physical degradation to the latter. But the time and patience of the Convention are exhausted, and I feel some evidence of that in the fact that I am not strong enough to go through in a mere outline of presentation the thoughts that I desired to present to this committee. Now, Mr. Chairman, what is to be the conclusion of this matter? If you say that you will adopt the theory of natural rights, why then you cannot be consistent unless you admit the woman as well as the negro to the franchise. I think the ladies who presented their views here the other night, had the best part of the argument, when they lectured their republican friends for giving such high privileges to the negro man and denying them to their own equals in citizenship. I thought there was some propriety in the criticism when they said that their hope had been in the Constitution of the United States, by which they were recognized as citizens, but the amendment to the Constitution had effectually cut them off from that hope. If you propose, sir, to send this question down to the people, in my judgment you ought to submit it as it really stands. If you propose to ask the people to give up some share of their sovereignty, you should be able to show to the people a reason why they should demit that sovereignty. You should show some great necessity, based either upon public law, upon humanity or the principles of christian faith and practice, why you should ask the negro to come here and make this his home. In the State of New York you did not treat the alien that way, in the year 1825. In 1825 a law was passed giving limited rights of citizenship by which aliens were enabled to hold real estate, become liable for taxes, duties, and assessments, and for the performance of military duty, in the same manner as citizens might, on filing their declaration, but they were not capable of voting or holding office or serving on juries, except when the jury *de medietate linguæ* was summoned. Now, there is a clear distinction, a distinction of citizenship, a distinction which you made in 1825 to the white population coming to this State, not merely coming as sojourners, but coming and declaring their intentions of citizenship. You told them that on declaring their intentions they might hold limited citizenship, that they should render military service, and that they should pay their taxes, but that they should not be capable of voting or holding office, or serving as jurors. Now I take it that in the statute of 1825, this great distinction was properly maintained, a distinction by which incomplete citizenship is recognized with all its privileges and its duties clearly defined. But if you proceed as is now proposed, the question is presented to my mind, and I shall feel it my duty to present it to this committee, in order to get an expression from it on the question, whether it is really your intention that the sovereign electors of the State of New York shall admit negroes to the highest grade of political citizenship? Do you mean them to serve as jurors? Do you mean them to hold positions in your courts? Do you mean them to be capable of holding the executive function of magistracy? Because if you do not, then I think that you ought very clearly to

define the nature of the citizenship you want to give.

Mr. FOLGER — I would like to ask the gentleman [Mr. Conger] a question. Is there anything to prevent a negro being a juror now, if he has the property qualification?

Mr. CONGER—That depends altogether on the practice of localities.

Mr. FOLGER—Is there anything in the law which prevents him from being a juror if he has the property qualification?

Mr. CONGER — I presume there is no absolute law against it.

Mr. LUDINGTON — I ask the gentleman whether a Democratic sheriff in the county of Seneca, has not recently placed the name of a colored man among the list of jurors, and whether that man was not drawn and did not sit on the jury in that county quite recently.

Mr. CONGER — As to the fact which is quoted I know nothing, but I am prepared to take very decided and high grounds on this question on the ground of public policy. We have reached, Mr. Chairman, a new stage in the history and relations of the State of New York to the general government. It was never pretended until the present day, that any authority at Washington should say to the sovereign electors of this State in what manner that sovereignty should be exercised or shared; but yet, you remember that the gentleman from New York [Mr. Opdyke] said two or three days ago that a decree had gone forth, the inevitable result of which was that the negro should become a citizen of the State. I undertake to say, sir, that if you give a true and a fair construction to the amendment proposed in Article 14 to the Constitution of the United States, that that same doctrine of limited citizenship still shows itself. If the United States government had the power and authority to say that a negro resident of the State of New York should be a citizen, in the highest sense in which I use the term, why did not the same amendment declare that he should vote? If he was to be a citizen of the highest grade, "an complete citizen," as Aristotle says; if he was to have all the functions of magistracy, and if he was capable of holding office, why, I ask, did not the same amendment declare that he should vote? Congress never pretended to assume any jurisdiction over this question and it has not yet. All that the second amendment says, is, that whenever the right to vote is denied, then the State that will deny that vote shall lose a certain share of its representation.

Mr. E. BROOKS — Will the gentleman [Mr. Conger] allow me to state that Congress has gone so far recently as to declare that a State Convention in session as we are here to-day, unless they recognize the right of suffrage for the negro, shall not be recognized in their relations with the Federal Government. That is substantially the proposition of Mr. Kelly of Pennsylvania.

Mr. CONGER — Does the gentleman [Mr. E. Brooks] mean to inform the committee that any such declaration has absolutely been enacted into law?

Mr. E. BROOKS—I do not mean to say that; but I mean to say this, that innovations of the Con-



gress of the United States upon the established rights and usages of States have gone so far as to admit of that proposition; and that within the last forty-eight hours a bill has been pressed in the United States Senate, compelling equal recognition of the rights of suffrage for the negro in all the States of the Union.

Mr. CONGER — Whatever the exact status of the negro as presented by the national Congress is, I think the sovereign electors of the State of New York are prepared to meet the issue. Not that I, for one, propose to make the issue, nor that I shall propose any measure which would be in derogation of any just right of the national Congress; not that I propose to bring the sovereign citizens of the State of New York in conflict with Congress, or any of those who seek to extend such unlawful influence over the votes and the actions of the sovereign people of the State of New York; but, sir, I think that this is the political question that we should send down to the people: "Will you deny this vote, because if you do, you lose a certain representation in Congress?" Small though it is now, it may be large one of these days. I want the people to look at that matter very calmly and to decide it very carefully. I do not suppose it is necessary to present the question of a property qualification, in order that the people shall vote on this thing intelligently. I had intended to show the reasons why we could consistently set aside the property qualification in this age of the world, but the time and the temper of this committee forbid that I should go into any other branch of the question. But as it stands now, with this amendment, I say as a matter of law that although Congress might have designed to compass something else, it has only made the black man a citizen in the second degree; he is not, by the proposed amendments (which are not law yet, for they have not passed, but on the supposition that they will pass one of these days) a citizen possessed of the highest functions of citizenship; he is not of necessity, a voter of the State of New York, if he is a resident therein, and the people have their choice whether they will accept the conditions imposed by way of penalty in this amendment, or whether they will not. I propose, Mr. Chairman, when opportunity offers to present this question to this committee, and through this committee, to the Convention. I think that is the practical question to present. I also want to make a distinction between the two kinds of citizenship. I am willing to admit for the time being that the negro shall be a citizen of the second grade, but I am not willing to admit him without the consent of the sovereigns of the State of New York, by a vote taken by them separately on that question; I am not willing to recognize him as a citizen with the highest functions of citizenship, and therefore I shall ask the Committee to say, and I wish the people to decide this question, if an opportunity shall be presented to them, whether they mean to permit the negro in the State of New York to be a candidate for any office in the gift of the people, either executive, judicial or representative. It strikes me that this is the fair, plain and direct course which this question ought to take.

Mr. RATHBUN — Will the gentleman [Mr. Conger] allow me to inquire if he knows the fact that the colored man to-day, who possesses two hundred and fifty dollars worth of real estate free from debt, may be a candidate, legally, for any office in the State?

Mr. CONGER — Then I propose in a proposition to be submitted either to this Convention or to the people, to have that thing forever settled, that the possibility shall no longer exist.

Mr. RATHBUN — I ask the gentleman if he does not know that such is the case now to-day?

Mr. CONGER — It exists by bare possibility because of the very inefficient way in which all these questions have been regulated by former enactments, and by constitutional provisions. But it is time, Mr. Chairman, that I should close. I regret extremely that for the last half hour or so I have felt so utterly inadequate to pursue the discussion after a plan that I had so imperfectly sketched; but, as I said before, I do not wish this question to be now set aside in any way in which the true merits of the case cannot be presented to the people. So far as the present negro vote is concerned, it is quite insignificant. Numerically it is not worth any agitation, but on great principles and with regard to the future, it is a matter, in my judgment, of the highest practical moment. You do not know, sir, and no man can tell in the years that are to come, what an influx we may have from the Southern States, of this same population. The state of things has changed so materially since the adoption of the Constitution, since 1846, that I think it is now high time that the sovereign people of the State of New York, should speak out in clear and unmistakable language on this subject. I do not think that opportunity should be presented, in any contingency, of a reaction in the Southern States —

Mr. DUGANNE — I would like to ask the gentleman merely if he supposes that at any future time we will have such a great influx of southern blacks as can overcome the isothermal lines. [Laughter.]

Mr. CONGER — Yes; in obedience to the laws by which these lines have been violated ever since the negro had a home in the State of New York. But that is not the question—that is not the issue. If a hundred thousand of these people were to come here, colonized for any special purpose, and brought here as paupers, unable to support themselves, and a charge upon the public charities, or the revenues of the State, who could shut them out? What would debar them, if you give them citizenship and sovereignty, from coming here and maintaining their home, and exercising the elective franchise? I do not mean to say that it is within the highest possibility that such a course as that would be adopted by any political party in this State, in order to secure a vote on some exciting election, but I do think the question of future migration of the colored population to the State of New York is one of very great practical moment. We do not know how long the present status of things may exist in the South. I think the people of the State of New York —

Mr. FOLGER — Is the gentleman from Rock-

land [Mr. Conger] opposed to the negro voting when he acquires a property qualification?

Mr. CONGER — Yes, sir.

Mr. FOLGER — Then you are opposed to the traditions of the people?

Mr. CONGER — I am not opposed to any one exercising the elective franchise who has received that privilege under any existing law. I do not propose, as the majority of this committee do, to disfranchise any one on account of color; but I propose hereafter to lay down a new rule, I shall propose in the amendment that I shall submit, that every man who is now entitled to vote, shall have the liberty of voting, but in reference to those who are to enjoy the franchise in the future, that that question shall be submitted to the people. If they approve of that action, I, of course, consent. But I am not willing that this question should be passed over at this time in such a way that we will have no clearer understanding in the future, whether a negro is a citizen of the highest grade. I regret, sir, that I have detained the committee so long, but I hope, that however imperfectly I may have presented some leading thoughts and views in this matter, that there is a kindness and an appreciation sufficient in this committee to give the views I have sought to present, a candid and a fair interpretation.

Mr. T. W. DWIGHT — I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Dwight, and it was declared carried.

Whereupon the committee rose and the President resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the Report of the Committee on the Right of Suffrage, and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on granting leave and it was declared carried.

On motion of Mr. MURPHY the Convention adjourned.

FRIDAY, July 19, 1867.

The Convention met at 11 o'clock, A. M.

Prayer was offered by Rev. WM. BAILEY.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. E. BROOKS presented two petitions from the citizens of Long Island, praying against the donation of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. LARREMORE presented the petition of Wm. H. Ten Eyck, and twenty-seven others, citizens of New York, upon the same subject.

Which took the same reference.

Mr. GREBLEY presented the petition of John M. Wandell and one hundred and eighty others, citizens of New York, upon the same subject.

Which took the same reference.

Mr. CURTIS presented the petition of Mrs.

Eliza Benton, and thirteen others, citizens of New York; also petition of Caroline E. Hubbard, and twenty others, citizens of Westchester county, asking for equal suffrage for men and women.

Which was referred to the Committee of the Whole.

Mr. CURTIS also presented the petition of C. C. Pinckney, C. W. Godard, A. M. Powell, Sinclair Tousey, Isaac H. Bailey, and fifty others, citizens of the county of New York, asking for equal rights for colored citizens, and against a separate submission.

Which was referred to the Committee of the Whole.

Mr. ANDREWS presented a petition from the town of Lebanon, Madison county, in relation to charitable devises and bequests.

Which was referred to the Committee on the Preamble and Bill of Rights.

The PRESIDENT presented a communication from the State Engineer and Surveyor in answer to a resolution of the Convention adopted June 6th, calling for an estimate of the cost of enlarging the locks of the Chemung canal.

Which was referred to the Committee of the Whole and ordered to be printed.

The PRESIDENT also presented a communication from the clerk of the Superior Court of the county of New York, in answer to a resolution adopted by the Convention in reference to the number of causes on the calendar.

Which was referred to the Committee of the Judiciary and ordered to be printed.

Mr. SHERMAN gave the following notice: That he will, after the expiration of three days, move to reconsider the following votes, respectively:

1st. That by which a substitute was adopted for rule 19.

2d. That by which the words "4. For the previous question" was stricken out of rule 23.

3d. That by which the words "for the previous question" was stricken out of rule 24.

4th. That by which a substitute was adopted for rule 28.

Which was laid on the table.

Mr. MERRITT, from the Committee on the Legislature, its Organization, etc., submitted the following report:

The Committee on the Legislature, its Organization, etc., unanimously report the following amendment to their report as heretofore submitted.

1st. Strike out of the second section the first sentence, to wit: "The Senate shall consist of thirty three members."

2d. After the word "territory" in the third section, insert the following words: "And the first district shall be entitled to such additional Senators as its citizen population shall in proportion to that of the entire State entitle it."

Which was laid on the table and ordered to be printed.

Mr. DUGANNE called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That it is the sense of this Convention that persons of African descent, residing in the State of New York, are entitled to the same rights

and immunities claimed by persons of European descent.

Mr. LIVINGSTON — It may be that I do not exactly comprehend the meaning of this resolution, but it seems to me that in its present shape it is so vague that the members of this Convention, who may vote for it without having had an opportunity to fully consider the proposition, might be found to have voted for a measure which they would not have done. In order, therefore, to limit the meaning of this resolution, and to avoid any misconception which might otherwise be placed upon a vote, by which it may be adopted or rejected, I beg leave to offer the following amendment thereto, and to call for the ayes and noes thereon:

"Provided, however, that in the opinion of this Convention, the amalgamation of the two races is to be deprecated, and should be prohibited by the fundamental law in this State."

Mr. GREELEY — I move that the whole subject be laid on the table.

Mr. DUGANNE called for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were refused.

The question was then put on the motion of Mr. Greeley and it was declared carried.

Mr. MERRITT called up for consideration the resolution offered by him a few days ago.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the consideration of all propositions having in view the mode or manner of submitting the Constitution as revised or any article or any part thereof to the people, be postponed until the Constitution or proposed amendments shall have been definitely acted upon by the Convention, and prepared for submission.

Mr. HUTCHINS moved to amend the same by substituting therefor the following:

*Resolved*, That a Committee of fifteen be appointed, whose duty it shall be to examine into and report upon the following subjects:

1st. The arrangement of the several articles and sections of the Constitution, as amended and adopted.

2d. The manner and form in which the Constitution as amended and adopted shall be submitted to the people for their adoption or rejection.

3d. The publication of the amendments, or of the Constitution as amended,

4th. The form of the notice of election.

5th. The form of the ballot.

Mr. MERRITT — I will accept the amendment.

Mr. CONGER — I would like to inquire of the mover of this resolution, whether he intends by the scope of the first part of the resolution, to prevent by special order any determination, or to forestall any action of this Convention in regard to any proposed amendment, or any proposed method of submitting any question to the people, so that if the Convention at this time, adopt this resolution, it will be considered as a special order referring to some future day every vote which the Convention may take on any matter which is either now or will be in the Committee of the Whole.

Mr. HUTCHINS — Certainly not.

Mr. ALVORD — When the resolution, to which

this is a substitute, was offered a few days ago by my friend from St. Lawrence [Mr. Merritt], I was opposed to its passage at that time, because of the fact, that we had before us in the Committee of the Whole, a question which had already been advocated, and which that resolution must necessarily, or by implication, have cut off for the then time. I, sir, shall vote for this substitute for the reason that now that question has been virtually disposed of, at least for the present, by the action of the Committee of the Whole. I thought, at the time, the question then being agitated for a separate submission of any portion of the Constitution, was, to say the least of it, premature, but we have got over that difficulty. We have already disposed of that question so far as that action was concerned, and it seems to me now eminently proper that we should delay this question of a separate submission of any proposition made before us, until we have finally concluded our labors, and we can devise what portion, in our judgment, shall be submitted separately, or what portion shall be submitted as a whole. I do not myself, as far as regards the agitation of the particular subject which is in the minds of every member of this Convention, think there should be any debate stifled, or any change of opinion growing out of any political arrangement whatever; but I do desire, in these the intervening stages of our action here as a Convention, we shall have no such disorganizing element brought into our midst for the purpose of taking our minds away from questions which should be legitimately in consideration before us. It is for this reason, sir, and for the reason that this is an opportune time for the movement, that I am in favor of the substitute offered by the gentleman from New York [Mr. Hutchins].

Mr. HARRIS — I approve of this resolution. Its form and provisions are very carefully prepared; but yet, sir, I think it is premature to act upon this subject now. What will there be for this committee of fifteen to do? We have not agreed yet upon a single proposition to be submitted to the people—upon a single amendment, and unless we make much more rapid progress than we have yet made, it will be very long before this committee will have anything to do. Undoubtedly this is the proper mode of preparing for the submission of our work to the people. In every Convention, towards the close of it, when the deliberations of the Convention were nearly over, when there was something to be submitted to the people, then a committee of revision has been raised to arrange the order proposed for submission, and to arrange the mode of submission, whether in separate articles or together; and until we have something to submit, until we have made some further progress in reference to this matter, it seems to me that we are acting very prematurely. We have not a single thing to submit, and *non constat* we never shall have. Why shall we begin at the wrong end and prepare the machinery for submitting the matter to the people, before we have adopted anything to submit.

Mr. HUTCHINS — The law under which we are acting, section 5, provides:

"The said amendments or Constitution shall be submitted by the Convention to the people, for their adoption or rejection, at the next general election, to be held on the Tuesday next after the first Monday of November next, and every person hereby entitled to vote for delegates may, at that election, vote on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said amendments or the said Constitution shall be voted upon as a whole, or in such separate provisions as the Convention shall deem practicable, and as the Convention shall by resolution declare. In either case the Convention shall prescribe the form of the ballot, the publication of the amendments or of the Constitution, and the notice to be given of the election."

That duty devolves upon us by the terms of the law under which we act. The gentleman said, the resolution is carefully worded. It is but the transcribing of the language of the statute into the form of a resolution. The only question is, whether this resolution is now premature. Under other circumstances I should have certainly said that it was; but the Convention will perceive how long a time has been taken upon this very question of separate submission, which is provided for in the law under which we are convened. On the very threshold of our debates another question comes up, and whether that shall be separately submitted or not may consume weeks in discussion, and so on with the twenty other subjects that may come up. It is for the purpose of preventing this, that I propose this resolution. If we adopt no amendments, then no Constitution is adopted, and there will be no work for this committee; if there are amendments, then this committee will be prepared to act; and it is for the purpose of saving this long discussion that we have been listening to for a week past, that I have offered the resolution as a substitute to that of the gentleman from St. Lawrence [Mr. Merritt].

Mr. KERNAN — I differ with my friend from New York [Mr. Hutchins] as to his premises. While on a certain subject the only question before this Convention was whether a proposition, which all concede must be submitted to the people in one form or another, should be submitted separately or as a part of the proposed Constitution, yet no long time has been spent in this Convention discussing that proposition. Indeed, no time at all, scarcely, has been devoted to its discussion. The truth is the time has been spent in discussing questions which must go before the people, and which cannot be determined by this Convention; therefore, sir, there is no need of this resolution to save time, so far as our past experience is concerned in discussing the question of separate submission here. It seems to me, therefore, that there is great force in the remarks made by the gentleman from Albany [Mr. Harris], that it is not wise at this time to raise a committee and thus take from this body the opportunity of discussing whether one proposition or another is to be submitted separately, or submitted as a part of the others. We are not prepared to say, it seems to me at this time, and we should not raise a committee to consider and report at this time, in reference to the mode and manner of submitting propositions which shall be

matured here. If the gentleman from New York [Mr. Hutchins] desires to save time by stopping discussions here on questions which should be discussed before the people, and which must be passed upon by them, why he can do it by calling gentlemen to the point involved in debate, and determination here. Now, sir, there has been scarcely anything said in reference to a separate submission of any proposition in this body, and I do not concur with the gentleman from Onondaga [Mr. Alvord], and I should be sorry to believe that the vote taken the other evening, on a single proposition, at the close of the session, when but few were here and none expected it, was to stand as a determination by this body that either that question should not be solved by a separate submission, or that other questions were not to be discussed and determined here, whether they would be separately submitted or conjointly with others. Now, sir, I trust and believe that it is wise for all here, whatever their views may be, to postpone for the present, the raising of the committee to arrange, determine and report, as to the submitting of our work, especially as we have not adopted a single proposition in this body, and have not gone over a single section of the report that has been made. I, therefore, appeal to members that we should not, at this stage, be cut off from expressing our views in reference to a separate submission of one question or another; that we shall not have all that referred to a committee, and all discussion upon it cut off until the close of our labors, when there will be no time for discussion at all.

Mr. HALE — I am in favor of the adoption of this resolution, not entirely for the reason stated by the gentleman from New York [Mr. Hutchins], who proposed it, although it might have some weight with me. I had the honor of introducing a resolution yesterday which was laid on the table, substantially to the effect of this, except that it differed in regard to the size of the committee, and also that the present resolution proposes to give more subjects to this committee than were mentioned in my resolution. I am in favor of this resolution, not for the purpose of preventing or forestalling debate upon this question, but for the purpose of having a convenient committee to whom all resolutions and questions that may arise relating to the form of submission, of any amendments that we may propose, may be referred. I think it is eminently wise there should be such a committee appointed; it will not prevent discussion by gentlemen whenever any question is raised on the subject of separate submission, but it will probably prevent determined action by this Convention upon that subject until after we have acted on the different propositions that are made to amend this Constitution. It seems to me that we shall all be better prepared to determine definitely on this question, after the reports of the standing committees are made and acted upon, and after we know what they have passed upon. It does not seem to me, however, that this fact is an objection to the appointment of a committee; we shall undoubtedly do something; I do not suppose there is a gentleman in this Convention who doubts that some amendments will be proposed to the present Constitution. I see no harm, therefore, in appointing a committee now, a



committee which will not be obliged to act, and which will not act until after the reports of the other standing committees are in; a committee to which matters can be referred that relate to this subject of submission. I must say, Mr. President, that I do not agree with my friend from New York [Mr. Hutchins] as I understood him, that the question as to whether the people shall be allowed to vote separately upon the report of the Suffrage Committee has been determined by this Convention. All that the Committee of the Whole have determined upon that matter is to vote down the proposition of the gentleman from Kings [Mr. Murphy]. It is known to this body that many who voted against that amendment and were opposed to it, did not by that vote intend to express themselves against a separate submission, or what is equivalent, against allowing the people to vote separately against this or any portion of the Constitution. But I think we shall be better prepared to vote upon that question of submission when it comes before the Convention, after the standing committees have reported, and the most convenient manner of postponing the action of the Convention will be the appointing of this committee, which will not act until the reports of the standing committees are in. I propose as an amendment to the resolution offered by the gentleman from New York [Mr. Hutchins] the addition of these words: "That said committee is not to report until after the reports of the standing committees have been received and acted upon."

Mr. HUTCHINS—I will accept the amendment of the gentleman from Essex [Mr. Hale].

The PRESIDENT—The Chair will inform the gentleman that the amendment is offered to the resolution of the gentleman from St. Lawrence [Mr. Merritt].

Mr. MERRITT—I will accept the amendment.

Mr. MURPHY—I do not discover from the reading of that resolution that any member of this Convention will be prevented, when a subject shall be under consideration, either in the Committee of the Whole, or in Convention, from proposing an amendment to such article providing for a separate submission to the people. As I understand the reading of the resolution, it is that the subject of separate submission may be examined into and reported upon by the committee proposed to be raised by it; leaving it to the Convention in its superior capacity to determine in any case whether it will or will not submit any articles separately, to be voted upon by the people. With that understanding, I have no particular objection to the resolution.

Mr. MERRITT—That is my understanding of the proposition, and with that view I accepted the substitute of the gentleman from New York [Mr. Hutchins].

Mr. CONGER—I am frank to say that that is not my view of either the meaning of this resolution, or what I now understand to have been the object in offering it. When I first put the question to the gentleman from New York [Mr. Hutchins], who offered this proposition, he said, if I understood him correctly, that he did not mean that this should operate as a special order to control certain ends or purposes to which I alluded.

But when, Mr. President, the gentleman from Onondaga [Mr. Alvord] rose to give his view of the operation of this resolution, he said distinctly, that it would operate to prevent a submission of any single proposition for a separate submission, either in Committee of the Whole or in the Convention. He avowed the object to be not only to cut off debate upon this proposition, but to cut off a vote. Now you will perceive, and I think the inference is irresistible, that in referring to a committee, a certain classification of the work in this Convention, with power, you are really establishing a special order for the control and management of your business. Suppose sir, in Committee of the Whole, I present a proposition that a certain clause in the Constitution is to be separately submitted to the people, and the gentleman from Onondaga [Mr. Alvord], immediately rises and moves to refer the proposition of the gentleman from Rockland, to a committee of fifteen having charge of that subject; I am shut out from my privilege of either presenting the proposition, or asking a vote upon it, because by a special order you have referred the whole subject-matter to this committee of fifteen. Is not that it?

Mr. ALVORD—Certainly.

Mr. CONGER—Exactly. That is a frank avowal. You pass this resolution, and every gentleman, no matter what his views may be on any subject, is precluded by that action from even making a motion in Committee of the Whole or in the Convention that a certain proposition be submitted to the people for separate vote. Now, Mr. President, if the object of this was simply to postpone the action upon these propositions to a convenient time, I would have no objection. But do you not see that the immediate and direct effect of it is to preclude every gentleman, no matter what his views may be, no matter what his position may be in this Convention, on one side or the other, with the political majority or minority, from presenting any proposition in Committee of the Whole or in Convention from calling the ayes and noes on that question? It is referred to the committee of fifteen, and how will you ever get a vote, even when the report of the committee of fifteen comes in, can you raise a vote on the original proposition? I would like to ask the gentleman from Onondaga [Mr. Alvord] if I am not correct in saying that this is the parliamentary effect of the resolution, that we are about to establish as a special order.

Mr. ALVORD—I think the gentleman from Rockland [Mr. Conger], is entirely mistaken in regard to the operation of it, and that on the incoming of the report of the committee it can be amended in any particular or regard, and upon such amendment the ayes and noes can be called in the Convention, and discussed as long as they please, under the rule.

Mr. KERNAN—Did I not understand the gentleman to say, the object of this was to save time in this body, by preventing discussion or argument as to whether there should be really a submission of separate clauses, or not, and referring that to a committee, who were to submit a report?

Mr. ALVORD—I will answer the gentleman from Oneida [Mr. Kernan], and will answer the

gentleman from Rockland [Mr. Conger], also. Sir, I say to the gentleman from Oneida that my idea in regard to this matter is, and that upon which my action proceeds, that this question of separate submission is prematurely brought into this Convention. It belongs to another and a different stage of our proceedings, and should go down to that stage in the regular order of our business. It only complexes and involves us in difficulties, in reference to these separate and distinct propositions, each and every of them, as they may come up, can as well be, and better, as far as the time and energy of this Convention is concerned, taken care of, examined, discussed, and determined, at the close of our labors, than now. I, sir, with the consent of the gentleman from Rockland [Mr. Conger], if he will permit me still to continue, desire to offer an amendment, so as to carry out distinctly and clearly my views: "that all resolutions referring to the subject embraced in this resolution shall be referred to that committee as of course, without debate." I desire to say, in answer to my friend from Oneida [Mr. Kernan], in a remark I understood him to make when he was up the first time, that he misunderstood me. I did not say, I do not wish to be so understood, that the determination of the vote upon the proposition of the gentleman from Kings [Mr. Murphy], determines the sense of this Convention upon the question of separate submission. I do not think I did. I am aware of the fact that that vote was taken under peculiar circumstances, that there were many who were in favor of separate submission on this floor who did not like the form of the proposition of the gentleman from Kings [Mr. Murphy], and who, therefore, are recorded as apparently against the idea of separate submission. But what I did say was this: that in my estimation, the discussion of the question of separate submission was at that time premature, but that I avoided pressing, either by my vote or by my voice, the motion of the gentleman from St. Lawrence [Mr. Merritt], because that question had been opened up in the Committee of the Whole, and I thought it a little ungenerous to say the least, in that manner to cut off the debate which had so far proceeded; but when that debate had been stopped by the action of the Committee of the Whole, I thought it entirely proper that the proposition of the gentleman from St. Lawrence [Mr. Merritt] should come before the house and have its final action in regard to what should be the disposition of this matter from now till the end of our labors. I wish to speak plainly on this subject. We are to have thrown into our faces every hour and minute of the day at which we shall come to the different orders of business, this question of separate submission, and the changes are to be rung on it from time to time throughout the whole of our labors. I ask, gentlemen, if they do not know that there lies upon the table of this Convention to-day, to be called up at any moment, when the mover requires, a separate and distinct proposition in regard to negro suffrage; *resolving* that it is the sense of this Convention that it ought to be submitted separately? Now, sir, unless the majority (I speak not of a political majority) of this house shall see fit to move

that that lie on the table, we are to be compelled to come up here and have a discussion on that, outside of the Committee of the Whole, and outside of the action of the Convention on that report, and it is for the purpose of getting rid of this difficulty, and bringing this down to the time when all men can speak with the entire length and breadth of their opinions and desires, and speak about it understandingly, and take it as a separate and distinct proposition, one from the other, that I desire this resolution to receive the assent of the majority of this Convention, and I trust, therefore, in this view, and in this light of the subject there will be no question in regard to the passage of the resolution.

Mr. C. L. ALLEN—I am in favor of the resolution as proposed by the amendment of the gentleman from Onondaga [Mr. Alvord.] We shall act, if we pass this resolution, in conformity with the Convention of 1821, and the Convention of 1846. The question of the separate submission of any article that was agreed upon in those Conventions, was never agitated until the close of the proceedings of each of them, and one of the reasons offered, and a very forcible one, not only in the Convention of 1821, by some of the most able men in that Convention, but also in the Convention of 1846, by some of the most able men there, was, that the Constitution could not be prepared, article by article, to pass upon each subject before the Convention as to their separate submission, and because the adoption of some articles, in connection with the adoption of other articles, if some were passed upon by the people, and others rejected, the symmetry and harmony of the whole instrument would be destroyed. We cannot tell, therefore, how much the adoption of one article is to be connected with the adoption of another article, or if one should be rejected and the other passed upon, the harmony of the whole is destroyed. It is for that reason, and to use the words now, of one of the most eminent members of the Convention of 1821: "It is impossible for us to determine as to the practicability of submitting several articles to the people until the determination of the whole, because the difficulty would be increased by the reflection, that the adoption of some articles, and the rejection of others, may greatly impair the symmetry of the whole instrument." Therefore, it is proper we should wait until we have passed upon all the articles submitted for our consideration, until we determine as to which shall be submitted separately. For that reason, I am in favor of the adoption of that resolution.

Mr. WELD—I do not know that I understand the gentleman from Onondaga [Mr. Alvord] fully, as to his opinion upon this question. As I understand the resolution and amendment offered by him, any resolutions that are offered bringing up the question of separate submission would be referred to this committee, and debate upon them stopped; now I do not understand that we, by raising a committee to whom these questions shall be referred, will prevent, for instance, the gentleman from Kings [Mr. Murphy] renewing his amendment to the report upon the question of suffrage in the Convention, and discussing the amendment before the Convention under the

rules. I ask the gentleman from Onondaga [Mr. Alvord] if, in his opinion, after the adoption of this resolution, the gentleman from Kings [Mr. Murphy] could not in Convention offer the same amendment to the report of the Committee on Suffrage that he did in Committee of the Whole, and to have it discussed and passed upon.

Mr. ALVORD—In answer to that question I will say that the gentleman from Kings [Mr. Murphy] has a vested right that we, by resolution, cannot take away from him, to bring it up before this Convention and ask for a division of the question, and discuss it also.

Mr. WEEKS—I think, under the decision we have made in this Convention, the gentleman from Kings [Mr. Murphy], has no more vested right upon that question of amendment, than any other member, because we decided that amendments are in order in the Convention. It seems that distinction must be made here, that we cannot by resolution prevent a member of this Convention from so amending a proposition, that, from its very terms, it would have to be submitted separately, and that when such an amendment is proposed, it being an amendment, to a proposition and germane to it, it must be considered and cannot be taken out of the Committee of the Whole and referred to a committee, but can be taken out of the Convention and referred to a committee, and in that view I do not see any objection to the resolution. If I thought it would prevent such amendments in the Committee of the Whole, and tend to change the proposition so as to compel it to be referred to the people separately I should oppose the resolution.

Mr. MERRITT—I certainly understood the resolution to allow any proposition to be submitted either in the Convention or Committee of the Whole, having in view the manner of submitting propositions to the people; but I did suppose that the disposition of such resolution or proposition would be referred to this committee, and this committee I understand is to be raised for the purpose of considering all such propositions, and, like any other standing committee, any subject of which they should have charge, would be referred to them; but since this discussion, and for the purpose of coming directly to the question, and considering the proposition of the gentleman from Onondaga [Mr. Alvord] to be more nearly like the one I originally offered, I shall accept his amendment, and allow, as far as I am concerned, a division of the question when the vote shall be taken. I therefore accept the motion of the gentleman from Onondaga [Mr. Alvord].

Mr. MURPHY—The position in which I understood this resolution to stand when I spoke a few moments ago has now been changed by the amendment which has been offered by the gentleman from Onondaga [Mr. Alvord] and accepted by the original mover of the resolution. In that form I am constrained to oppose it. I cannot consent in advance, to limit and restrict the action of this Convention upon the different propositions which shall be submitted to them in regard to the amendment of the Constitution. We are, by the law under which we are assembled here, authorized to submit to the people, either as a whole or in separate propositions, the different matters

that may come up for consideration here. These propositions are various; they relate to different subjects, some of which may appropriately be referred to the people separately. Others do not require any such distinct submission. I think it is in contravention of the law and would be unfair, in advance, to bind this Convention to say that none of these propositions shall be considered in connection with the different articles which may come up with the report for consideration. But sir, I am particularly opposed to this resolution, because it seems as if it were aimed at limiting the action of this Convention in regard to the amendment which I had the honor to propose a few days ago, in Committee of the Whole, which has been the subject of consideration. The gentleman from Onondaga [Mr. Alvord] speaking *ex cathedra* on this subject says, I have a vested right to have the proposition voted upon in the Convention. I will merely say to him that he is not the presiding officer of this Convention. He has no authority to say what will be the determination of that officer, on those questions which shall be submitted to the Convention upon the rising of the committee, and if this resolution be adopted it will cut off all offer of that amendment on my part, notwithstanding I may have offered it in Committee of the Whole. I think it is highly unjust to cut off the minority in this Convention from having that question considered now, which has been so fully discussed in Committee of the Whole. I am opposed to it for another reason. I wish to follow up that amendment with another one, and that is the propriety of a separate submission, of the admissibility of the negroes to suffrage without the restriction of the property qualification. I want to have the determination of this committee and of this Convention upon the two projects: first, the submission to the people of the extension of the right of suffrage beyond what it is now, and also submitting to the people the question whether persons shall vote or not without the property qualification.

Mr. M. I. TOWNSEND—I desire to make a suggestion to the gentleman from Kings [Mr. Murphy], that I have examined the proposition of the gentleman from Onondaga [Mr. Alvord], and it only provides that resolutions should be referred to that committee, but does not provide that propositions, amendments, etc., should be referred to that committee, as I supposed it impossible to do. A proposition offered in Committee of the Whole cannot be referred to any committee outside. This does not propose to do that. It only proposes to refer resolutions which may be offered.

Mr. MURPHY—That may possibly be the proper construction of this resolution. I think it well however, that there should be no doubt upon the subject; and I therefore propose to offer an amendment to come in at the end of the resolution, as follows:

"But nothing herein contained shall limit the power of the Convention, in the Committee of the Whole, in the consideration of any subject, to so amend the article under consideration, as to submit the same to the people separately."

I do not know that I have anything more to add



upon this subject. But I wish to have the determination of the Convention with regard to the proposition which I had the honor to submit, and the other proposition which I have already intimated that I intended to propose in such event. As regards other matters, it will be time enough when they come up for consideration in the Convention, for us to adopt this resolution.

Mr. SPENCER—When the question of a separate submission was first introduced in Committee of the Whole by the gentleman from Dutchess [Mr. Carpenter], on the proposition to submit an amendment in relation to a qualification requiring the ability to read and write, I took occasion to deprecate the introduction of the discussion of any question for a separate submission in the discussions of the Committee of the Whole, apprehending as I did, and as the experience of almost the past two weeks has proved, that it would occupy the time of the committee to the exclusion of the discussion of the proper subject before the committee. And I here wish to submit to the Convention, whether the law under which we are assembled authorizes the discussion of that question in that form. I now read from the fifth section of the law authorizing the meeting of this Convention. The clause which reads as follows:

"§ 5. The said amendments or Constitution shall be submitted by the Convention to the people, for their adoption or rejection, at the next general election, to be held on the Tuesday next after the first Monday of November next, and every person hereby entitled to vote for delegates may, at that election, vote on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said amendments or the said Constitution shall be voted upon as a whole, or in such separate propositions as the Convention shall deem practicable, and as the Convention shall by resolution declare."

I suppose it to be impracticable that the Convention, in Committee of the Whole, shall by a resolution prescribe the manner of submitting any question before it to the people; but that, when that question comes up to be determined, it must be by a resolution of the Convention.

Mr. LAPHAM—I am opposed to the amendment last offered by the gentleman from Kings [Mr. Murphy], for the reason that it is in direct contravention of the amendment offered by the gentleman from Onondaga [Mr. Alvord]. Under his amendment all resolutions on this subject are to be referred to this committee without debate in the body of the Convention. I beg leave, sir, to differ respectfully from the statement of the gentleman from Oneida [Mr. Kernan], that this question of separate submission has not thus far occupied any considerable portion of the attention of the Convention. I have not been an inattentive listener to the proceedings of this body, either in the Convention or in Committee of the Whole, and I call the attention of the gentleman from Oneida [Mr. Kernan] to the fact that three at least of the most elaborate speeches which have been made in the Committee of the Whole, have been made exclusively upon this question of separate submission, and made by gentlemen who have avowed their intention to

vote for suffrage to the colored men. Many other gentlemen have spoken on the subject. A vote in form has been taken upon the question. We now find that all that action practically goes for nothing. It is claimed here that thus far we have not advanced a single step upon the question as to whether this proposition, or any other, shall be submitted separately for the consideration of the people. We find, on looking at the law which authorized the calling of the Convention, that this question of separate submission by the framers of the act, is placed in juxtaposition, with the other propositions upon which we are to act—which relate to matters of form merely—to the mode of publishing the Constitution which we may adopt, or the amendments, which we may recommend, to the form of the ballot, and to the notice to be given to the electors. It is found among those matters, and it properly belongs there. Now, Mr. President, I have another reason for favoring the resolution of the gentleman from St. Lawrence [Mr. Merritt] as amended by the proposition of the gentleman from Onondaga [Mr. Alvord] and it is this. In the reports of the committee on the subject of suffrage, which are before us, I find an elaborate report by the minority of that committee, devoted to the question as to whether the proposition to extend suffrage to colored men, shall be submitted as a separate proposition to the people. The report closes with a resolution recommending that that form of submission shall be the one adopted by the Convention. The report of the minority is entirely silent as to the right of the colored man to vote. Not one word is contained in it against his right to vote. The report, like many of the gentlemen who have spoken in favor of separate submission, impliedly recognizes the right of the colored man to vote. The fact is, this question as to whether the right of the colored man to vote, shall be submitted separately, rests in the mere caprice of the members of this Convention, and for that reason I am in favor of postponing it until we take up questions which are matters of form merely. I am not indifferent, in this aspect of the case, to what has been said by gentlemen in the Committee of the Whole. I am aware that the gentleman from Kings [Mr. Murphy] and the gentleman from Rockland [Mr. Conger] and the gentleman from New York [Mr. Larremore], three of those who have spoken, have spoken against the right of the colored man to vote, but but they are three exceptions. In all the other elaborate speeches which have been made here, not one word has been uttered against the right of the colored man to vote. The question, I repeat it, is one partaking more of caprice than anything else, and for that reason it should be postponed, as this resolution will postpone it, until we have adopted the fundamental articles or the amendments which we are to recommend, and the question shall come up as to the manner in which they are to be submitted to the people.

Mr. E. BROOKS—I move that the consideration of this resolution be postponed until the second Wednesday in August.

Mr. MERRITT—We do not know how long the sessions of this Convention will last. It is conceded it is very proper such a committee should



be raised. There has been no reason submitted, in my judgment, why that committee should not be raised now. I am, therefore, opposed to the postponement of the consideration of this resolution, and I hope that we will now decide definitely whether we shall act upon it, and for that purpose I shall call the ayes and noes, on the motion to postpone.

Mr. KERNAN—I desire to make a suggestion. If the resolution was a simple one to raise a committee, to report as to the arrangement and submission of the Constitution, or parts of it not otherwise determined by the Convention, I could see no objection. But my objection is that, under the name of appointing a committee to devise as to the manner and mode of submission, gentlemen avow that they propose to prevent any discussion or consideration in the Convention or committee, if they can, of the separate submission, of any particular provision of the Constitution. Now, it places gentlemen in an awkward position. There may be, and I presume there are, many gentlemen here who are entirely willing to propose for submission to the people of an article to the Constitution in regard to the question under consideration of the Committee of the Whole.

The PRESIDENT—The Chair must ask the gentleman to confine himself to the question of the postponement.

Mr. KERNAN—In regard to that, I do not desire to make any remarks.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Brooks, and it was declared lost by the following vote:

*Ayes*—Messrs Barto, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Comstock, Conger, Corbett, Corning, Curtis, Develin, Gross, Hitchinar, Kernan, Larremore, Livingston, Lowrey, Magee, Masten, Mattice, Morris, Murphy, Paige, A. J. Parker, Robertson, Rolfe, Roy, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, S. Townsend, Tucker, Weed, Wickham, Young—89.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Baker, Ballard, Barker, Barnard, Beckwith, Bell, Bickford, E. A. Brown, W. C. Brown, Carpenter, Case, Clinton, Cooke, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ely, Endress, Evarts, Ferry, Field, Folger, Fowler, Francis, Frank, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Hardenburgh, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Ludington, McDonald, Merritt, Merwin, Miller, C. E. Parker, Pond, Potter, President, Prindle, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Seaver, Silvester, Sheldon, Sherman, Smith, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams—78.

Mr. KERNAN—If it is not postponed, I hope the amendment of the gentleman from Kings [Mr. Murphy] will be adopted, otherwise gentlemen will be placed in this position. Gentlemen who may be willing to submit, as a separate proposition, the proposition as to female suffrage and who are entirely willing to mature such an article and to submit it to the people separately, very likely would

not be willing to put it in the Constitution without knowing whether it was to be submitted as a part of the Constitution, or as a separate proposition. So as to other propositions; and, if I understand right, it is claimed that unless this amendment of the gentleman from Kings [Mr. Murphy] is adopted, then that the resolution will prevent the determination by the Convention at the time of action upon a particular article, whether it shall be submitted as a part of the Constitution, or as a separate proposition. It seems to me, therefore, that we are making, in advance, with that construction, a committee which really ties up many gentlemen as to their votes, and ties up the entire Convention from discussing whether they will or will not submit a proposition separately. I trust, therefore, that with that construction of the resolution, it will not be adopted without amendment.

Mr. VAN CAMPEN—I am opposed to the amendment of the gentleman from Kings [Mr. Murphy], for the very reason that at this stage of the proceedings I am opposed to being foreclosed in my action in regard to questions of that character. I am not able to say now whether I want to submit the question separately or not, and shall not be able until I see the work of this Convention. As to the question of submission separately or joint, whether the colored man should vote or not, it has been assumed in the Convention that the party with which I act have decided that they will not submit the question of colored suffrage separately. I voted against the amendment of the gentleman from Kings [Mr. Murphy], proposing to submit that separately. I do not wish to be understood, and it must not be understood that by that vote I committed myself one way or the other upon the question. I must have that well understood. It is the part of wisdom, in this Convention, to postpone all questions with regard to submission as a whole or in separate parts until the action of this Convention has advanced to such a stage that we may wisely judge of the propriety of submitting it as a whole or in parts.

Mr. CLINTON—I understand the effect of this resolution perhaps differently from other gentlemen, and I wish, if I am wrong, to be corrected about it, because my vote depends on its meaning, or the way in which I understand its meaning. Now, I understand that this resolution, and the amendments to it, as proposed, look only to, and include only the perfected work of the Convention—that it refers to and includes only such amendments of the Constitution as have been actually passed upon and adopted by the Convention, and goes no step further. That it has no tendency whatever to prevent the Convention from acting in two directions upon any proposition, and that it still remains competent for any member of the Convention to ask it to act upon the proposition, first in one and then in the other of these directions. Now, to make myself clear, by an example. I apprehend that this question of the extension of the right of suffrage to females equally with males, which has been presented to this Convention—I suppose that that proposition is lost. Then this committee will have nothing to do with it; but this resolution under consideration prevents those who favor

female suffrage from introducing to the Convention another proposition, and that is, that it shall be submitted to the people directly, irrespective of the Convention and its determination whether or not they will incorporate such an amendment in their Constitution.

Mr. MASTEN—I would ask the gentleman from Erie [Mr. Clinton] whether the question whether or not a certain thing shall be done, which is to be submitted to the people, does not involve separate submission?

Mr. CLINTON—I suppose not, and if the question be answered the other way it answers my question. I suppose this, Mr. President, although I may be wrong, that the Convention may possibly be in doubt upon a question, and choose even where they are opposed to introducing it directly into the Constitution, to refer the question to the people.

Mr. ALVORD—I merely wish to say, in so many words, that with the usual adroitness and skill of my friend from Kings [Mr. Murphy] he has introduced a proposition which, upon its face may appear entirely fair, but when gentlemen find they have voted for it to be incorporated in this resolution they will find they have not voted for the original resolution.

Mr. A. J. PARKER—I am entirely satisfied with this resolution as it stood on the substitute offered by the gentleman from New York [Mr. Hutchins], but since the amendment has been adopted, offered by the gentleman from Onondaga [Mr. Alvord], which would have the effect of precluding all discussion, I think, upon the question of submitting different propositions to the people, by referring them at once to this committee, it seems to me important that the amendment of the gentleman from Kings [Mr. Murphy] should also be adopted. It will not do to preclude discussion upon this subject. The mere appointment of the committee at this time cannot be objectionable. I see no reason why this committee might not have been appointed when the other committees were appointed, as a standing committee, and resolutions might be referred to it, not of course and not precluding debate, but upon the order of the Convention, as resolutions are referred to the other committees. The committee should be organized, in my judgment, and it should receive such questions as are sent to it by the Convention; but I think the Convention at the same time should reserve the right to discuss fully and fairly any proposition that may be brought there, and the question whether the proposition shall be submitted separately to the people; for there are propositions, undoubtedly, which we will agree to adopt upon a separate submission, but which we will not consent to adopt by incorporating them into the body of the Constitution. Those of us, who sincerely desire to make the best possible Constitution, one which shall receive the approbation of the people, cannot consent to incorporate into it a proposition of doubtful character, which may lead to the rejection of the entire Constitution. I hope, therefore, this Convention will not tie its own hands, will not deprive itself of the right of considering such questions as shall be presented with regard to the propriety of a separate submission;

but either that the mover of this resolution will adhere to the substitute as offered by the gentleman from New York [Mr. Hutchins], or that the amendment offered by the delegate from Kings [Mr. Murphy] will be adopted in the resolution. If, in any form, a separate proposition can be presented for the raising of a committee to which these matters can be referred, I should prefer it, but I shall vote against any resolution which precludes discussion upon any of these separate propositions.

Mr. CONGER—When this resolution was first offered by the gentleman from New York [Mr. Hutchins] I submitted to him the question whether it was designed to cut off the action of this Convention, as in Convention or in Committee of the Whole upon the existing question in Committee of the Whole. Subsequently, the gentleman from Onondaga [Mr. Alvord], avowed that it would have that effect. But he has since said that inasmuch as a proposition was submitted by the gentleman from Kings [Mr. Murphy] for a separate submission of his proposition, or of some proposition, that the gentleman from Kings [Mr. Murphy] had a vested right to present that question to the Convention when the Committee of the Whole should rise and report on the whole subject. Now, I would like to ask the gentleman from Onondaga [Mr. Alvord] whether, when that proposition comes into the Convention, it can be amended, so that some other proposition could be submitted to the people?

Mr. ALVORD—I trust not.

Mr. CONGER—Very well. Now, then, clearly the whole object of this resolution, at this time, is to prevent the submission in Committee of the Whole, or in the Convention, of any modification of the original proposition of the gentleman from Kings [Mr. Murphy]. That proposition was that there should be submitted to the people the question of negro suffrage, based upon property qualifications. I was a little surprised that my friend from Ontario [Mr. Lapham] should have supposed from any remarks I made last night, that I was opposed entirely to negro suffrage. I thought I distinctly said that I did not propose to disfranchise a single person who already exercised that right, but that I designed to submit some other proposition, as an amendment to the proposition of the gentleman from Kings [Mr. Murphy], or a substitute for it, that in my judgment would place the proper question before the people as a proposition separately to be submitted. Now, Mr. President, I consider that it is right and proper that at some time this Convention should agree to refer certain propositions on which it is acting to the committee of fifteen. I do not rise here now to oppose, directly or indirectly, the propriety of a reference of every proposition that has been matured in Committee of the Whole to this committee of fifteen for final revision, and I agree with the gentleman who spoke here that it would be unfair to infer, from any vote which is or might be taken, that any gentleman is concluded, from changing his vote towards the close of the session on any proposition for a separate submission. But I think I can show clearly that the only effect of this proposition at this time is simply to take

this single question, as to the manner in which the suffrage is to be determined, out of the power of the Committee of the Whole, to entertain any proposition in regard to it, and that the whole effect of the resolution is to send every matter involving the question of a separate submission directly to this committee of fifteen, without any vote upon it. I consider that this is unfair. I think that if, before the Convention had gone into the question of suffrage, it had been distinctly announced that they would cut off every proposition for a separate submission, and send every such proposition to a committee on final revision, that would have been a fair notice. But, now, when only one form and proposition for separate submission has been presented and voted upon in the committee, to conclude all other forms and to send them to this committee of fifteen, the "tomb of the Capulets" for all such propositions, I think it is unfair, I will also say I think it is ungenerous. I do not know what may be the pleasure of the Convention in regard to the proposition of the gentleman from Kings [Mr. Murphy], but it was my purpose to submit an amendment, and if that is voted down, I now desire to submit the following addition to the resolution, by way of amendment:

"Provided, however, that this resolution shall not be construed as a special order to prevent, either in Committee of the Whole or in Convention, the presentation or consideration of any proposition for a separate submission to the people of this State, or the calling for a vote thereon."

Mr. PAIGE—I understand, sir, from the gentleman from Onondaga [Mr. Alvord] that he expresses the opinion that no delegate in the Committee of the Whole on the question of the right of suffrage should be permitted to offer any proposition presenting in a different form the amendment of the gentleman from Kings [Mr. Murphy] which was offered in Committee of the Whole. If that, sir, is to be the effect of this resolution, it is presenting this principle, that the Convention has in its power, when any amendment of the Constitution is reported or presented, to deny to every delegate the right to present any proposition amendatory of it, to cut off all propositions to amend and perfect the article so presented. If this, sir, is the effect of the resolution I cannot conceive a proposition presented to this Convention that is so radically objectionable. I cannot conceive any proposition of so arbitrary and so despotic a character. It interferes essentially with the rights and the privileges and powers of delegates as representing their constituency. If a delegate is to be precluded, in Committee of the Whole or in Convention, from offering an amendment to any proposition presented for the amendment of the Constitution, it is the denial of the highest privilege that we possess. If this is to be the construction of this proposition, I trust, and I should hope that the majority of this Convention would reject it.

Mr. LAPHAM—I desire to say, in answer to the suggestion of the honorable gentleman from Schenectady [Mr. Paige], that there is in the resolution no denial of any right whatever to a delegate to offer his proposition. It is simply a question relating to the order of our business, and nothing else,

When the report of the committee is made, and the subject shall come up before the Convention, or be taken up in Committee of the Whole, the learned gentleman from Schenectady [Mr. Paige], and every other member of the Convention, will have full opportunity to present every topic which they wish to have discussed. Unless this is done we shall debate these propositions over and over again in Committee of the Whole, when we are considering these subjects on their merits and then renew and reiterate debate when we come to the final proposition of the committee. It is simply a question of the order of business.

Mr. SEYMOUR—I think the gentleman from Ontario [Mr. Lapham] must be mistaken with reference to shortening the time of the Convention by the adoption of the resolution which he has advocated. This question of separate submission of articles of the Constitution may occur with regard not only to one or two, but with regard to any article that may be proposed to be inserted in it. A case was stated the other day by a gentleman on this floor where the State of Massachusetts, in amending its Constitution had proposed nine distinct amendments, and that each one should be presented separately to the people. Now, there may be and I think there will be by the time we shall get through and establish what these articles are to be, a prevailing opinion that more than one article that is proposed to go into this Constitution should be separately submitted. I will assume that it may be so, and that discussion will be had upon all questions, and I would ask my friend from Ontario [Mr. Lapham] whether it would not be better, whether it would not be shortening time, and facilitating the business of this Convention, if the discussion should come up when the subject-matter of the amendment is before the Convention. If it is deferred until these questions shall be presumed to have been settled by the voice of the Convention, and then the report of the committee which is proposed to be raised shall be brought in, I cannot see why we would not be subjected upon the various motions that may be made to amend that report, and to submit one, and another, and another of these amendments and separately to another discussion, just like that which has detained this Convention for the past two weeks. I think the question of the separate submission of an article will be better discussed, and will be discussed in a shorter time, if that shall be taken in Committee of the Whole when we have that article before us, and are discussing it. What are the arguments in favor of the submission of any article, and from what source are they drawn? They are drawn from the character of the amendments, they are drawn from the supposed favor or disfavor with which that amendment, if adopted, will be received by the people. They are drawn, in fact, from the general nature of the subject itself, and I, for one without any reference whatever to the particular question of suffrage that has occupied the attention of this committee and the Convention so long, would prefer to discuss such a question, and I could discuss it more intelligently and in a shorter space of time if I were to discuss it in connection with the merits of the proposition itself.



I look upon this as a saving of time, and the facilitating of the business of this Convention. When the report of the proposed committee shall come in, you may move to amend it, to be sure; but in order to do that, you have got to go over the same ground that has been gone over again and again. In the discussion upon this proposition in committee, and I prefer, for one, that we should consider these questions as we pass on, and complete the consideration of them, and not be compelled to recur to them again from time to time.

Mr. GREELEY — It is a mistake of the gentleman [Mr. Seymour]—a vital mistake—that we shall have as many proposals for separate submission to discuss if we pass as if we reject this resolution. We are discussing from day to day the propriety of submitting to the people amendments to the Constitution which may never be made. In case this resolution is adopted, we shall consider and debate only the question of separately submitting those propositions which this Convention shall have adopted in this Constitution. We shall probably not have more than two separate submissions to discuss instead of having a discussion on the separate submission of each provision here before its adoption in Committee of the Whole, and before its adoption in Convention.

Mr. DALY—I beg leave to differ with the gentlemen from Westchester [Mr. Greeley.] The proposition under discussion is whether the proposed provision in the Constitution we are about to frame, shall be incorporated into the body of the instrument to be submitted to the people for their ratification, or whether it shall be submitted as a separate matter to be decided by a vote of the electors, and with their approval to become a part of the Constitution. As one having little feeling or sympathy with the existing provision, so far as it imposes a property qualification or makes it depend upon a distinction of color, I have abstained from any active participation in the debate, though, at the same time, I have felt the deepest interest on the question of the submission of this provision to the people. I have felt that interest, not from anything arising from the question itself, but from a conviction in my mind, that the fair work of this Convention will go for nothing if that provision is unconditionally incorporated in it. I do not mean to say that my judgment in this matter is infallible; I merely mean to say that it is fairly and honestly exercised, and that I have no sympathy with the causes which lead to that judgment. It is my impression that a large portion of the people of this State have views upon that subject, very different from mine, and that we shall array against the Constitution, we shall frame an amount of organized resistance that will render its adoption exceedingly doubtful. I believe, Mr. President, from what I have seen here, that we are about to adopt a good Constitution. I think we have never had such an opportunity in the history of the State to make a Constitution which will tend to the perpetuation and preservation of our republican institutions. There are very many important provisions involved, necessary reforms to be incorporated in that Constitution, and I am jealous of their pre-

servation; I am apprehensive of their fate; and it is for that reason alone that I am anxious that the majority of this Convention shall not peril the work we are about to do, by making it a condition with the electors of this State to accept the new Constitution with this provision in respect to negro suffrage in it or no new Constitution at all. If the idea of incorporating the provision in the body of the instrument is suggested to gentlemen as a matter of political policy, in my humble judgment they will find it to be a very great mistake; and there is no better proof of that than the fate in this State, of the party that insisted from political reasons upon inserting certain provisions in the Constitution of 1846, in such a form, that we are now called upon to restore it to its past condition. The consequence following that work in this State, was the removal from power of the party that framed it: and nothing will be gained in this body nor in any other body, by framing the fundamental law of the State with reference to the exigencies of any party, whether it happens to be in the majority or in the minority of this Convention; and any movement, having its foundation in such a cause, whether it proceeds from the party to which I belong or whether it proceeds from those who compose the majority of this Convention, will have no sympathy from me. I most sincerely feel that this is a very grave and important question, and I do earnestly hope that gentlemen who control the action of the Convention, will not preclude the possibility of discussing that question at some future stage of our proceedings. The gentleman from Ontario [Mr. Lapham] says it is simply a question of the order of business. He is right in a certain sense, but it will become the last order of business when everything else is finished. But this is so important a question, with reference to its relations to the Constitution itself, that I feel, with the gentleman from Rensselaer [Mr. Seymour], that the true mode of disposing of that feature is to dispose of it in connection with the subject-matter, and not leave it until the last stage of business of the Convention, then to revive all the discussions that have taken place. The matter is now fresh in our minds, and many be disposed of, one way or the other.

Mr. COMSTOCK—I suppose it will be in order for me to ask the President of the Convention what will be the construction of the resolution without the amendment of the gentleman from Kings [Mr. Murphy]. Will or will it not take from the Convention or the Committee of the Whole the power to consider the question of a separate submission in connection with any particular proposition for constitutional amendments?

The PRESIDENT—The Chair will respectfully inform the gentleman from Onondaga [Mr. Comstock] that he can give no obiter decision. When a case arises calling for the decision of the Chair, it will endeavor to give it.

Mr. COMSTOCK—I should be in favor of the resolution with a proper understanding of it. But I am opposed to it if by its adoption this Convention abdicates its own power. When I vote for a constitutional amendment to be incorporated into the body of the Constitution to be submitted collectively, it is because I favor that



amendment. It is necessarily implied that I approve that amendment and am willing to put it into the body of the Constitution. But, sir, I am willing to vote for another proposition which I do not necessarily approve, for the purpose of sending it to the people to be voted upon separately. The question of female suffrage, when that arises in the Convention and I am called upon to vote for it, if I do not know that it is to be separated from the body of the Constitution, as at present advised, I am not prepared to vote for the proposition. But, if I know at the time, when the question is before the Convention that the Convention will send it to the people as a distinct and separate proposition, I think I may vote for such a submission without committing myself upon the merits of the subject one way or the other. The same illustration may be made with reference to various propositions which may well come before this Convention. I think, therefore, that the adoption of the resolution, without something like the amendment offered by the gentleman from Kings [Mr. Murphy], will tend very much to embarrass the deliberations of this Convention.

Mr. ALVORD—On the question of determining whether we shall or shall not separate and divide the propositions which we shall complete in this Convention, I wish to stand in a different position from the gentleman from Onondaga [Mr. Comstock], who has just addressed this Convention. Sir, I hold it to be my duty, absolutely, not to send to the people of this State any proposition which does not meet my hearty approbation and which I am not free to support and sustain. That is the position I occupy, and I occupy none other. Whatever may be the action of other gentlemen in this Convention, I will not vote for a submission to the people of New York of any question that I do not myself believe from my inmost heart to be the duty of the people of the State of New York, as well as my own to sustain and support. And now, sir, a little farther in reference to this proposition of the gentleman from Kings [Mr. Murphy]. That proposition results in an entire abrogation—in an evisceration of the resolution to which it is proposed to be attached. It takes away from it all power to accomplish what is intended by it. It might as well read that no resolution shall be passed on this subject. Its result is this: that gentlemen will have passed a resolution for a particular purpose and then have stultified themselves—backed down from their position by adopting the amendment of the gentleman from Kings [Mr. Murphy].

Mr. MURPHY — The motives which the gentleman attributes to me are such as I never intended. I do not think my amendment "eviscerates" the resolution so as to render it a nullity. My amendment restores the resolution to what it was as it was offered by the gentleman from St. Lawrence [Mr. Merritt]. In my judgment it is a proper amendment to be passed by this Convention, with this resolution. As proposed by the gentleman from Onondaga [Mr. Alvord] in his amendment, this question of a separate submission is to be left until the close of the proceedings of this Convention. The question of a separate submission is not to be considered by the committee of fifteen

until the Convention shall have nearly completed its labors, because the resolution provides that all the articles and propositions which are to be determined upon by this Convention shall be referred to that committee to be examined and reported upon. We shall have gone through the whole order of business in this Convention, considered all the topics that are to be embraced in the Constitution before this committee will be called upon to act; and then in the last stage of our proceedings they are to consider and to report upon the subject of a separate submission. How much time they may have, and how much diligence they will use, we cannot say; we know in the last stages of the life of any deliberative body like this, there is always haste to close the deliberations, and the proper consideration of a subject at that time is not bestowed. There will not be time enough for them to consider the propositions which will be submitted; and I ask whether it is proper and statesmanlike to leave the consideration of this important matter to the short period, which will be necessarily left after this Convention shall have concluded their chief labors.

Mr. McDONALD—Will the gentleman [Mr. Murphy] allow me to ask him a question? Which does the gentleman consider the most important, what shall be submitted, or whether it shall be submitted separately?

Mr. MURPHY—In regard to the alternative which the gentleman [Mr. McDonald] has presented, I suppose that which is submitted is the most important.

Mr. McDONALD—Then will the gentleman [Mr. Murphy] inform me why we should not first consider that subject?

Mr. MURPHY—The gentleman asked me which I consider the most important. I consider submission also important, though I think the suggestion has no relation to the matter that I am now discussing.

Mr. McDONALD—What I wish to know is whether the less important subject should not be last considered?

Mr. MURPHY—I do not choose to answer every impertinent inquiry. I do not mean impertinent in an offensive sense, but impertinent to the subject I am discussing. I was about to remark that the proper object of a resolution of this kind, it seems to me, is to submit to such a committee the different articles as they are passed upon in this Convention in order that they may arrange them both in matter of form and matter of language; this they can do as each article is passed upon and perfected substantially by the Convention. That is the proper object of a resolution of this kind, and such I supposed was its object as proposed by its mover [Mr. Merritt]. Now, it seems to me, Mr. President, that the purpose of the resolution as amended is to shirk the record. We have had here under consideration for a week or ten days this very important proposition—the one of all others which we deem, or at least those who think with me, deem proper to be submitted to the people, and yet we have had no vote upon it. The gentleman from Onondaga [Mr. Alvord] is wrong when he says that there is already a record on

that question. We have had no record. We have considered the question merely in Committee of the Whole, and we have taken a vote not by yeas and nays, but by a division of the Committee. How gentlemen stand upon this question we do not know, and we cannot tell until the report of the committee shall be made to the Convention, and this amendment shall be renewed, and the yeas and nays taken under the rules of the Convention. Adopt this resolution and the purpose at all events will be effected of having no record made upon this question now. I remark again that I consider this the most important question to come before us. I introduced it early in the discussions of the Convention; but whatever is to be its determination upon this question, I can see no objection to its consideration in connection with the discussion of the report. The reasons which are given are that there will be discussion upon submitting all the different propositions and articles which may come up, and thus the time of the Convention will be consumed by the repetition of the argument already made to the question now under consideration in Committee of the Whole. I am anxious and desirous that a vote should be taken on that proposition, and my amendment proposes that that shall be saved for this resolution, and of course, upon the general principles which I have advanced it would also be saved in regard to all other articles which may be considered separately. The gentleman from Ontario [Mr Lapham] says that this is a mere question of the order of business. It is not, sir, a matter of the order of business. It is a matter, in my judgment, which affects the right of every delegate in this Convention, and the honorable gentleman might as well propose in so many words that every amendment coming from the minority of this body should be submitted to that committee of fifteen to be reported upon at their pleasure. I am in favor of a free and full discussion of all topics. I am willing to meet the majority upon every question, but I wish gentlemen who are opposed to me may be put on the record also, in order that the people may understand where each and every member stood on the various propositions which shall have come before the Convention.

Mr. RATHBUN — I do not intend to occupy the time of the Convention but for a moment. It seems to me that the course of argument adopted by gentlemen on the other side, ignores the fact which stares every member of the Convention in the face, and which meets every man who looks at the business of this Convention directly, and presents to him the two sides of this question as debated. On the part of those who object to the resolution, some say they want to debate the question; and that this is a "great question;" and they want a "record made upon the great question;" they want gentlemen of the Convention to come up here and record themselves and show that they are not afraid. Governor Seward once said, out in Minnesota, when speaking about the war in the South, "who's afeared?" After he got back to Washington, among Southern senators, it turned out that he was himself "afeared to speak." I say that if gentlemen want to record themselves—if they want to make a record, they should have that privilege. I was sent here for that very

thing and I believe other gentlemen also. There need be no apprehension about the record—we will make a record—and a clean record in the progress of this business. The idea of being charged with endeavoring to "stifle debate" or to "shirk responsibility" is not decorous for any body. I would not say that of any gentleman of this Convention, although I would not find very much fault with any gentleman who should say it of me, for I think he will find out before we get through with the business of the Convention, that he is mistaken. On the one hand we see (I mean those who believe in having order in the proceedings of the Convention), a gentleman who wants to debate this question; another gentleman over yonder thinks that it is orderly and profitable to discuss the proposition in regard to each provision as we go along and determine whether we would submit that separately. That is the proposition which is now before the Convention. The gentleman from Rensselaer [Mr. Seymour] thinks it is a waste of time to cut off these debates in connection with the topic which shall be discussed and argued in regard to each and every proposition as to whether it shall go into the body or shall be a part of the tail of the Constitution; that is, section by section and article by article, we are to discuss as we go along the two questions, always in connection. One is, is the thing proper to go into the Constitution at all, and the other is, shall it go into the body of it, or shall it go on the outside of the body? How long will it take to discuss those various propositions in this manner? We have spent ten days here in discussing a single proposition, and mainly upon the point whether it shall be submitted separately. Now, we are to take this as a sample, and each proposition is to be discussed by itself and to be marked as an inside passenger or an outside passenger as we go along. Then we are to have a committee appointed to report to us in regard to the arrangement of the Constitution by articles and by sections, and then when it is all arranged by articles and sections we can look at it as a whole. Then we will see that we have wasted a great deal of time in discussing the question whether this article, or that, should go into the body of the Constitution or go outside. And after we have wasted all that time, perchance, we shall not agree upon anything—then what? What an enormous amount of apprehension and fear and trembling has been wasted upon this floor. Now, I can say to gentlemen of the Convention, that I believe that those who intend to vote for a change in the suffrage, intend to permit the fullest discussion of the question as to how that question shall be submitted, and that they intend that every gentleman in this Convention shall speak until his wind is broken if he chooses [laughter]; and then we will decide, those who agree on one side voting in one way, and those on the other side voting the other, and the majority will rule. I have not determined how I shall vote upon that question, but I apprehend that I shall make up my mind by the time the discussion takes place. On the other hand, it is claimed that each section should be taken up, one by one, and examined, and one by one settled, and when they are settled

and ready to put them into the fabric we are to erect for the purpose of making a complete work; and having thus proceeded in order, we complete our work and lay it before the Convention, ready to be disposed of. How shall it be done? We say that it is not now for us to look at and examine and see what part of it shall go in the body of the instrument. I submit that at the proper time no one wants to prevent debate and cut off discussion on that point; but I desire to cut off argument and declamation as to which of these articles shall go into the Constitution, and statements that the people will not agree to this or to that. But you have got to go to the people. Everybody knows that all this must be submitted to the people. It amounts to nothing until it is submitted and passed upon by them.

It is for the Convention to determine at the proper time whether we have anything to submit, and say then how shall it be determined, and then take out such parts as are necessary to be submitted separately. I submit, Mr. President, that there is but one way to proceed in regard to this business in an orderly manner so as to reach the ultimate object at which we aim, and that is to proceed to discuss the provisions of the Constitution as we go along, until we get the whole thing ready for the hands of the committee to put it in proper form and shape, and then the question will arise, how shall this be submitted? On that, the most free, the most liberal and the most independent discussion is the right of the members of the Convention, and I apprehend that members will not be deprived of that enjoyment. [Laughter.]

Mr. TILDEN—I am one of those who have taken no part in this discussion (of the negro suffrage), and I have at no time designed to say anything on the subject, until what is properly the preliminary question—the mode in which the proposed amendment in regard to suffrage is to be submitted—should be disposed of by the action of this Convention. But it seems to me that in respect to that there is a fallacy lurking in the argument of my friend [Mr. Hutchins], who introduced this resolution, and it surprises me that it is not apparent to so astute and keen an intellect as he possesses. It is this, sir. If we vote on this question without determining whether we are to submit the change separately or not, it incorporates the provision into the Constitution that is to be submitted, and no further action of this body on it is necessary at all to dispose of that question; it disposes of the whole matter finally. I take it, sir, that every section presented here and voted upon finally and adopted, becomes a part of one entire Constitution to be submitted to the people, unless there be action to the contrary by this Convention. I suppose that results as a matter of course. I suppose that gentlemen who are willing to vote to submit a proposition to the people which they are not in favor of incorporating in the Constitution, and submitting as an entire body, have no way to express their opinion except to vote against the adoption of that clause. Sir, I do not think my old and valued friend from Cayuga [Mr. Rathbun] is right in supposing that there is any danger that we shall discuss all the various propositions here made in regard to their mode of submission. I do not understand that anybody proposes to make a

submission in more than three or four parts. My individual judgment when I came here was that in regard to the suffrage question, it had so connected itself with old controversies and with controversies now existing in another part of the country, that if we wished to elevate the action of this committee out of the influence of those controversies we could do so. I trusted we should be able to do so by a unanimous vote in submitting the clause calculated to promote that sort of discussion, in a separate amendment. In regard to the amendment of the judiciary so far as the court of appeals is concerned, certainly, and perhaps the entire amendment, it is my individual and personal judgment, although I have no knowledge or ground to form an opinion as to the result this body would arrive at, that it would be expedient to submit that also as a separate matter for the reason that if it should so happen that we should fail in respect to other parts of this Constitution to suit public expectations, we could yet meet the general and almost universal demand there is to relieve the court of appeals of the great burden which it now feels itself unable to satisfactorily discharge. Further than that I do not see any occasion for a separate submission, although it is quite possible that somebody might propose another subdivision to which I might feel willing to assent. I, sir, have no possible motive except to extricate this Convention from the danger it would be in of drawing this Constitution within the irritating and exciting controversy that prevails in other parts of the country and which have prevailed in this. Assembling as we do here to reform the Constitution of the greatest State in the Union, a State which, as I observed the other day, comprises a population larger than the entire population of the United States when the Convention of 1777 was in session, comprising a vastly larger variety of interests, and having a duty to perform of the highest magnitude which man can undertake, it seems to me eminently desirable that if we should extricate this work from anything upon which we were pretty sure to differ, and should sit here like wise men, and candid men, and statesmen, and endeavor to revise the other parts of the Constitution, and make it what it ought to be for this great State—what it ought to be also because it will be an example in other States. Sir, there recurs to me a singular incident illustrating the extent to which our constitutional regulations have been copied in other States. It happened to me in the Convention of 1846 that an article on corporations had been baffled to and fro without coming to a result satisfactory to anybody; and it was sent to a select committee of which I was chairman.

That committee decided on the adoption of one provision that I was not able at that time to understand and never have been able to understand since I reported it as they ordered it and it became a part of the fundamental law. A short time after that I was passing through Albany and I heard a very curious discussion in the Senate as to the meaning of that provision. On my returning to New York I met the author of it, and I found him as much puzzled as the Senate had been or as I had been. But, sir, that article, clause for clause,



word for word, and letter for letter, stands in the Constitutions of seven different States of this Union. It illustrates to what extent our example is likely to be followed in other States. I consider, therefore, that we have a most august and important duty to perform, and for my part, unmoved by any consideration except my desire to fulfill that trust to the utmost of my ability, rising, as I think it does, above all other considerations that could affect the action of men in this body and remembering that I shall scarcely live under another Constitution of this State, and that all those associations and that honorable pride that have clustered around my native State from my childhood are concerned in the result of our work, I certainly desire to do everything in my power to accomplish that result in the most satisfactory manner. I am not here to question any man's motives, or to arraign any man's judgment, but I regret profoundly that this Convention has not found itself able, by a little conference among the leading gentlemen who represent the two great parties here, to have come to a result that would have withdrawn this topic from our deliberations. I think it could have been done. I think it is unfortunate that we have not been able to do it. I am content. I certainly would be quite content to have a reasonable postponement of this question, provided that postponement did not involve a decision beforehand of the question postponed. But, sir, to be called upon to put this clause in controversy into the Constitution, to make it a part of an entire instrument, to vote on its adoption, so that if there be no other action of this body, and no other action is necessary, the question is wholly and completely decided, does not seem to me to be the best way to reserve the question of separate submission. If we are finally to act upon the whole matter, I shall desire hereafter to submit the reasons which govern my vote on the main question.

Mr. M. I. TOWNSEND—Will the gentleman from New York [Mr. Tilden], allow me to ask him a question? Did not the Convention of 1846, of which the gentleman was a member, perfect the article upon suffrage according to the opinions of the majority of that Convention, and leave the discussion of the question of separate submission until the coming in of the report of the committee, to whom was referred the question of the mode of submitting the Constitution?

Mr. TILDEN—I will answer my friend from Rensselaer [Mr. M. I. Townsend]. The question of suffrage, and the question of submission, in the Convention of 1846, were questions of very little comparative consideration or importance.

Mr. M. I. TOWNSEND—I ask the fact, whether they did not so perfect it?

Mr. TILDEN—I have not quite done. The action on that subject was deferred—that is to say, action enlarging the suffrage. The Constitution was adopted in respect to negro suffrage as it then stood. Does the gentleman [Mr. M. I. Townsend] mean to propose that we shall follow that example now, and take the Constitution as it is?

Mr. M. I. TOWNSEND—I propose nothing. I was asking how his friends did in 1846.

Mr. TILDEN—Well, sir, we will do now pre-

cisely as they did then if the gentleman is satisfied with it. We will let the clause now in the Constitution stand until the close of the Convention, and then we will submit the proposition to enlarge the suffrage. We will follow the precedent. Sir, I have no personal feeling about this question, except a desire that this Convention should get along in the most harmonious, useful, and satisfactory manner with its business. I regret to be compelled, to enter into any discussion on the general question. But if we are to vote finally on the adoption of a clause in the Constitution, it may be necessary that I say something in respect to the grounds upon which I put my vote.

Mr. ROBERTSON—I think that this is a fit occasion for us to look at the chart by which we are to be guided in the government of our action there. If I understand aright the proposition of the gentleman from Onondaga [Mr. Alvord], it is to have the question of the separate submission of the various amendments to be proposed by this Convention, postponed until after we have all the propositions as adopted assembled in array before us, just as they have been carried by the Convention, and then we are to determine whether they shall be separately submitted to the people for their votes, or whether they shall be submitted in mass as a new Constitution. It appears to me that this question has been discussed by all parties who have undertaken to reason upon the subject, as if we were collected here to make a new Constitution, under authority of the Legislature for the first time, influenced by the present Constitution, as an existing institution, simply as to its effect upon our votes, and by the opinions of the people of this State in regard to their already established fundamental law. The Constitution of 1846 was formed under the authority of the Legislature, which spontaneously ordered an election of delegates for the purpose of making an entirely new Constitution. There was no restriction in the act under which they assembled by which they were enjoined or advised to submit to the people of this State any separate proposition which they might think proper to introduce by way of amendment or as part of an entirely new Constitution. It would, therefore, have been novel to submit, as an amendment to a prior Constitution, a separate proposition of a Convention collected together by authority of the people of this State, for the purpose of forming an entirely new Constitution. We are not collected here under any such revolutionary statute. We are assembled in pursuance of that very Constitution of 1846, which has prescribed that after its trial for twenty years the Legislature should call together, upon the summons of the people, delegates, not to reframe the entire Constitution, but for the purpose of revising that Constitution as it stood, so that if, upon inspection and consideration, the united wisdom of the delegates collected should so determine, amendments should be made to the Constitution to be submitted to the people. Before that provision we had been without any one of this kind. We had been obliged to fall back upon the original power of the people to change the government as they thought proper through its most direct and effective representative, the Legislature of



the State. We have now, as authority for our meeting, the support given by the Constitution of 1846, which calls us together for a particular purpose. It was not the intention of the delegates who met at the Convention that formed that Constitution or that of the people who finally adopted it for their government, that there ever should be vital changes made in that Constitution but that whenever, by the light of the experience of twenty years, sufficient changes should appear necessary to be made in that Constitution a Convention should be called together for the purpose of making them. We have now met under that authority and for that purpose and no other. We are bound in all our actions here to see that we do nothing more than to amend and repair an old time-honored building, not endeavor to build a new one of entirely new materials according to the fashion of the times—of unseasoned materials, not half as able to bear a strain as the old, and a building not half as commodious as that old fortress of the people's rights, not having half its precautions and defenses for the protection of the rights of every member of the community. I maintain that such was the object for which we were called together and I find the Legislature of this State has strictly followed such interpretation of that provision in the old Constitution. Section 1 of the act by which we are assembled, provides that "an election shall be held on the fourth Tuesday of April next, of delegates to meet in convention to *revise* the Constitution of this State and to *amend* the same."

Then section five provides that:

"The said *amendments* or Constitution shall be submitted by the Convention to the people for their adoption or rejection, at the next general election, to be held on the Tuesday next after the first Monday of November next, and every person hereby entitled to vote for delegates may, at that election, vote on such adoption or rejection, in the election district in which he shall then reside, and not elsewhere. The said *amendments* or the said Constitution shall be voted upon as a whole, or in such separate propositions as the Convention shall deem practicable, and as the Convention shall by resolution declare."

Here, in the 5th section, is the first suggestion made or hint given that a "Constitution" is to be framed and submitted to the people. In the views I am presenting, I do not desire to deny in any respect the power of this body to change the whole fabric of our present Constitution by way of amendment, or to amend each section of the Constitution and submit the fabric so changed to the vote of the people of the State. But I contend that the whole purport of the act of the Legislature, following up the spirit and letter of the old Constitution was to provide for amendments to that Constitution, and that they rather looked to this Convention when it met to prepare and submit such propositions by way of amendment as, in the language of the 5th section, "the Convention should deem practicable" and necessary. Such section proceeds to provide specially, and it takes particular care therein, after providing for separate amendments and changes to be made in the old Constitution for their sub-

mission to the people of this State. It says that—

"In either case the Convention shall prescribe the form of the ballot, the publication of the *amendments* or of the Constitution, and the notice to be given of the election. In case the said *amendments* or *parts* of the said Constitution shall be voted upon separately, every person entitled to vote thereupon may vote for or against any one or more of them. At the election mentioned in this section, the inspectors in every election district shall provide a suitable box or boxes, to receive the ballots given upon the *said amendments* which ballots shall have the word 'CONSTITUTION,' written or printed, or partly written or partly printed upon them, so that when they are folded that word will appear upon the outside of the ballot \* \* \* And when it shall be ascertained by the board of State canvassers, under the foregoing provisions, *that any proposition* submitted as aforesaid has received more votes in its favor than have been cast against the same, then *that proposition* shall be declared to be adopted, *either as the Constitution, a part of the Constitution, or an amendment to the present Constitution*, as the case may be; and said board of State canvassers shall determine and declare, by their certificate in writing, to be filed and recorded in the office of the Secretary of State, the Constitution as adopted, *revised or amended*, \* \* and *each of the said amendments* which shall not receive a majority of all the votes given upon it at the said election, shall be void and of no effect."

Looking at this statute in connection with and as carrying out the provisions of the old Constitution, I would ask gentlemen before they undertake to pass and submit any amendment, whether as a part of the duty enjoined upon them of *making amendments*, it was not intended that this Convention should provide that each separate proposition as it come up, if it were an amendment of a part of the old Constitution should take the place of such part, or if entirely new, and to form a part of the new Constitution should be separately submitted to the people, and whether that question of separate submission ought not to come up in and be submitted with each separate proposition as it may be passed upon by the Convention, and not postponed to a late hour of the session to determine what should and what should not be so separately submitted. Because, as been well said, the propositions which we are to submit may be of great magnitude. The changes may be of a violent kind and repulsive to the people of this State, it becomes therefore very important to determine whether those violent changes, repulsive and revolting, be welded to other provisions, and then left to the mercy of a majority, who, at the end of this discussion, may determine that all the propositions which are submitted in the Convention shall be submitted in mass, the good and the evil, the pleasing and revolting, the safe and the dangerous, thus preventing each proposition from being left to stand or fall by its own merits, and thereafter submitting them in the same way to the people—who are thus precluded from passing upon their separate merits. The question of a separate submission should be passed upon while the subject is before us and under discussion, or else we shall

be wanting in our duty to our constituents. We shall entirely deviate from the primary authority under which we are collected together, and usurp powers which the Legislature has not given us, if we undertake to act upon all the parts of the Constitution in mass, and leave to a mere committee privately to select at their discretion the parts which should be separately submitted, so that when their report is brought into this Convention, the mass may be carried as a whole, when every part could not be. I trust we shall not prove so recreant to our duties and our oaths.

Mr. DUGANNE—It would seem to me, that in the opinion of many gentlemen in the Convention, the Constitution which we are about to frame is a mere paper kite, and that the business we have come upon to manufacture wind enough to support that kite—its skeleton covered with printed speeches—while we shall attach a series of bobs to it in the shape of what are called separate submissions. Mr. President, I have not come up here to engage in any kite flying or to amuse myself with any paper bobs. I have come here to take part with my fellows, instructed by my constituents—the people of the State of New York, to form a symmetric instrument—a Constitution which, in some amended form, is to take the place of the Constitution which was adopted in 1846.

Mr. MERRITT—Will the gentleman [Mr. Duganne], give way for a moment. In the discussions which take place, I hope gentlemen will confine their remarks to the question pending. I hope it is the purpose of those who are in favor of raising this committee, to reach a conclusion on that subject at this session; and if a point of order should be raised when a speaker is wandering from the question, I hope it will not be taken as a personal affront.

Mr. DUGANNE—I gave way to the gentleman [Mr. Merritt] supposing that a question was to be asked; instead of which, he has favored me with a lecture upon the way in which I should address the Convention. I have merely to say that I alluded to this, because I believe that in constructing this instrument—in doing the work we are sent here to do, we should do it methodically, and in such a manner that, at the conclusion of our labors, the whole work will be before us; and, when that is done, we should take upon us the duty of so arranging and so deciding upon the different provisions and amendments as to present them in a methodical and symmetrical form to the people. Therefore, I am in favor of postponing the consideration of any separate amendment, or its mode of submission to the people, until we have the whole Constitution before us, and can look upon it intelligently and ascertain whether the house which we are sent here to build is symmetrical in all its proportions, has its pillars, its bases, its foundation and its superstructure all in proper regard to what is required. When we have decided upon that, it is time for us afterward to conclude whether our instructions go so far as to permit us to submit also other portions—extraneous matters which do not belong to the perfect fabric which we are sent here to construct.

Mr. GRAVES—In the present condition of the business of this Convention, I cannot see the

importance of the passage of this resolution; I therefore move to lay the whole subject on the table.

The question was put on the motion of Mr. Graves and it was declared lost on a division by a vote of 51 to 59.

Mr. WEED—I am forced, Mr. President, to rise to a question of order, by reason of the position taken by the gentleman from Onondaga [Mr. Alvord], who proposed this amendment. As I understand the gentleman, he claims that his amendment will cut off the right to offer amendments which have been offered in Committee of the Whole in Convention. If so, it violates rule 39 of this Convention, and for that reason, as the amendment accepted by the gentleman from St. Lawrence [Mr. Merritt], proposes to suspend or modify a rule of the Convention it cannot be considered without one day's notice.

The PRESIDENT—The Chair rules that the point of order is not well taken.

Mr. WEED—I would ask the Chair if it so rules because in its opinion the amendment does not modify or change the rule?

The PRESIDENT—The Chair is not aware that it changes the rule. If it should have that effect, it holds it to be the province of the Convention to adopt such regulations as it chooses. When a case arises the Chair will decide it. Does the gentleman [Mr. Weed] appeal from the decision of the Chair?

Mr. WEED—No, the statement of the Chair is satisfactory.

The PRESIDENT—The Chair understands that that is the only way by which a rule can be contravened. If a course of action shall be adopted by the Convention, which shall in any way contravene a rule, the Chair, when the case arises, will decide whether the rule has been regularly contravened or not.

Mr. McDONALD—If anything has been demonstrated here, it is this, that postponing the consideration of how we shall submit this Constitution until a later period in the proceedings of the Convention, time will be saved. The simple statement made by the gentleman from Westchester [Mr. Greeley] shows this must be so, because we shall consider more questions than we shall approve. But gentlemen say that there are only one or two questions to be thus considered. We have already a half dozen propositions for separate submission. We have one in regard to the educational qualification; we have one in regard to female suffrage; we have one in regard to negro suffrage; and the gentleman from New York, [Mr. Tilden] proposes one in regard to the judiciary; others may want one in regard to the Legislature, and so on through the whole list. But supposing there is no saving of time whatever, ought this proposition for a postponement to prevail? In answer to a question I put to the gentleman from Kings [Mr. Murphy] he answered that he regarded the question of *what* we were to submit as more important than the question as to *how* we were to submit it. Then when I asked him why we should not postpone the consideration of the least important subject until we should have first determined the most important, he replied that my question was "impertinent," and declined to

answer it. If my question was impertinent, I was impertinent for asking it. If it was pertinent, then as a member of the Convention I simply submit that the gentleman from Kings should have answered it. Now, was it pertinent? If it is admitted that one subject is more important than the other, is it not the direct result of that admission? If we have less time to consider the one than the other, we should consider the least important question last? Should we place the less important subject where we have the less time or the greater time? It seems to me that the admission of the gentleman [Mr. Murphy] that one was more important than the other, carried with it the idea that the less important subject should be considered when there was less time to consider it, and for this reason, in addition to the other, that time will thus be saved. I submit then that this order of business ought to be adopted so that the less important subject should be placed at the time when (if there be any such time) we shall have the least time to consider it.

Mr. BURRILL — It is so near the usual hour of adjournment that I shall not add anything more than a single suggestion to what has already been said in reference to postponing the subject under consideration. I merely wish to suggest a practical difficulty which will arise from a postponement of the question of a separate submission until after the entire Constitution shall have been perfected by the action of this Convention. If the amendments to the Constitution had been proposed in form, as amendments to the existing instrument, it would be very easy, after the action of this Convention had been completed, to provide a method for submitting any separate amendment to the people so that they might take a separate vote upon every independent proposition. The amendments which have already been made to the first section of this report of the Committee on the Right of Suffrage, must have convinced the Convention that the only mode of providing for the separate submission of any proposition, connected with or embraced in that report, must be by adding a proviso to a section or by altering the language of the section. It seems to me, therefore, that the only manner in which the question of a separate submission can be secured, will be either to restrict the Convention to the adoption of separate amendments to the existing Constitution, so that they can be submitted separately, or by allowing the alteration of the language of the section previously passed, so as to bring up the precise question which it may be desired shall be separately presented. It seems to me, therefore, that a practical difficulty will arise from the postponement of this subject until after the entire Constitution shall have been completed, and that the way to secure the separate submission of any particular subject will be to frame the language of each section so as to separate the proposition to be submitted from the residue of the section, and thus to avoid confusion and mutilation. If this be so, then it must be evident that the question of separate submission of each proposition desired to be submitted must be settled as we proceed, and cannot be deferred until after the form of the entire instrument shall have been completed.

Mr. M. I. TOWNSEND — At the opening of the debate upon this question this morning, I was of the opinion that time was lost by the introduction of the question. I supposed that the gentlemen who are in favor of separate submission had discussed the question so fully, that probably it would be much shorter to allow the debate to be finished upon that subject, than it would be to discuss the question of the mode in which this discussion should be conducted. But we have used up the regular session of the day and I have become satisfied that business will be facilitated by adopting the resolution that shall defer the discussion of the question of the mode of submission until a later day in the session. For this reason, I shall vote in favor of this proposition. I think, however, that proposition, even by rejecting both of these amendments is not sufficient to accomplish the purpose proposed; that the proposition should be still further amended; and that, instead of the amendment of the gentleman from Onondaga [Mr. Alvord] being confined to mere "resolutions," it should be propositions. So that I do not express myself fully in favor of the resolution, even rejecting this amendment. I feel that no injustice will be done by taking that course, for in bodies such as this, as in the courts, some reference must be had to precedents. Those gentlemen who are in favor of a separate submission, as far as I know, claim to be the representatives of the party who, in 1846, had a majority in the Constitutional Convention of that day. And in that case the majority of the Constitutional Convention perfected a section such as they believed ought to be adopted, and then passed from it to other work of the Convention, and it was not, until the report of the committee as to the mode of submission of the article was made, that a further proposition was formed and prepared for a separate submission. We may adopt that course in this Convention very well, if the majority of the Convention shall be in favor of it, but in the discharge of the duty which the people have devolved upon us, I esteem it our duty to first see what we believe ought to be the constitutional provision, and in doing that —

Mr. GRAVES — I would ask the gentleman from Rensselaer [Mr. M. I. Townsend], to offer the resolution he speaks of, to see if we cannot dispose of this question.

Mr. M. I. TOWNSEND — My friend from Herkimer [Mr. Graves], will find that he is foreclosed, because there are two amendments now pending.

The PRESIDENT *pro tem* — A further amendment is not now in order, there being two amendments pending.

Mr. M. I. TOWNSEND — I feel that is the true way to proceed, and while I should have been willing, had it not been for the time we have been already occupied in the discussion of the mode of procedure, to have assented to the discussion of this question when the article itself was under consideration. I feel it is due to the Convention and due to the people of the State, to have a vote on some proposition that at this stage of the proceedings shall put an end to this debate. I have one thing further to say and but one, and that is in reply to a remark made by my respected friend from New



York [Mr. Daly]. I understood him to say that the party in power in 1846 were thrust from power in consequence of adopting the Constitution of 1846. I may be allowed to dissent entirely from that remark. The party that adopted the Constitution of 1846 was the democratic party.

Mr. MERRITT—With great respect I call the gentleman [Mr. M. I. Townsend] to order. The matter of debate is not pertinent to the question before the committee.

The PRESIDENT *pro tem*—The gentleman from Rensselaer [Mr. M. I. Townsend], will proceed in order; though the Chair is not aware that the gentleman has yet deviated from the rule.

Mr. M. I. TOWNSEND—My remarks were in answer to the gentleman from New York [Mr. Daly], and I have but a word to say. I hope my friend [Mr. Merritt], will be patient with me, as both he and I believe in equal rights, and he has occupied a good deal of the time of the Convention. The party which adopted the Constitution of 1846, called itself the democratic party; and it lost its power, because in 1848 it proposed to surrender the whole of the territories of this Union to slavery. Sir, the feeling upon that subject was so strong, if my memory does not—

Mr. VAN COTT—I call the gentleman [Mr. M. I. Townsend] to order. It is not relevant to the subject under discussion before the Convention, whether the democratic party in 1848 proposed to surrender the territories of the United States to slavery or not.

The PRESIDENT *pro tem*.—The Chair is of the opinion that the gentleman from Rensselaer [Mr. M. I. Townsend] is taking a rather wide range in his remarks.

Mr. M. I. TOWNSEND—I hope the Convention will allow me to conclude the sentence I was uttering, after which I will not say another word. If my memory serves me, the feeling on the subject of slavery in 1848 was so strong as to cause the gentleman from Rockland [Mr. Conger] to break over the isothermal line of the democratic party and vote for Martin Van Buren [Laughter].

Mr. TAPPEN moved that the Convention take a recess until four o'clock.

Which was lost.

Mr. CONGER—I would like to say very briefly—

Mr. VAN COTT—I call the gentleman, [Mr. Conger] to order. He has already spoken twice on this question.

The PRESIDENT *pro tem*—The point of order is not well taken unless some other gentleman desires to speak.

Mr. CONGER—I wish to state now to the Convention what is to be the practical result of the operation of this resolution if it is adopted. I will present the point briefly and clearly, and I ask a patient audience if I have trespassed too much on the time of the Convention. When, in the Committee of the Whole on the question of suffrage, every proposition to submit any question to the people is taken out of the committee and referred to the special committee, then the final result of the Committee of the Whole will be this: that all male persons aged twenty-one years will have the right to vote. When that report comes to the Convention the question will be taken upon

that proposition, and if any gentleman wishes to have it amended so as to insert a provision that any woman of this State may vote, if he has voted he will be voted down on that proposition; and the question will come up to him whether he will say that the Constitution shall pass in that form that all male citizens aged twenty-one shall vote. If a man is conscientious about his position, and he votes to protect his real position as to the right of the women, he will have to vote "no" on that proposition, and be so recorded on the Journal, and so in regard to a gentleman who wishes to submit the question of negro suffrage to the people. He will be precluded from his vote and he must vote squarely on the proposition that every male of the age of twenty-one years shall vote, and in order to justify his position or to protect himself in his notions of what is right, he has got to vote "no" on that proposition, and be so recorded on the Journal. I submit to the Convention, that this is a sort of parliamentary dodge which is not worthy of this body. I do not think it is right to say that any gentleman who wishes to present, conscientiously, any proposition, and if he is voted down on that proposition he must so far abandon his whole position as to take the proposition submitted by the majority and vote "aye" or "no" upon it and be so recorded.

The question was then put on the amendment offered by Mr. Conger, and it was declared to be lost.

The question then recurred on the amendment offered by Mr. Murphy.

Mr. E. BROOKS called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment offered by Mr. Murphy, and it was declared lost by the following vote:

*Ayes*—Messrs. Barto, E. Brooks, E. A. Brown, Burrill, Carpenter, Cassidy, Champlain, Chesebro, Comstock, Conger, Corning, Daly, Develin, Hardenburgh, Hatch, Kernan, Livingston, Lowrey, Magee, Masten, Mattice, Merwin, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, Robertson, Rolfe, Roy, Schell, Schoonmaker, Schumaker, Seymour, Tappen, Tilden, S. Townsend, Tucker, Weed, Wickham—40.

*Noes*—Messrs. A. L. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Ballard, Beckwith, Bell, Bickford, W. C. Brown, Case, Corbett, Curtis, Duganne, T. W. Dwight, Ely, Endress, Evarts, Field, Folger, Fowler, Francis, Goodrich, Gould, Grant, Graves, Greeley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Huntington, Hutchins, Kiuney, Krum, Lapham, A. Lawrence, M. H. Lawrence, Ludington, McDonald, Merritt, Miller, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Rumsey, Seaver, Silvester, Sheldon, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wales, Williams—62.

Mr. MURPHY offered the following amendment to be added to the resolution:

"But nothing herein contained shall limit the power of the Convention in the Committee of the Whole, to consider the propriety of submitting the provision of the Constitution now under consideration, separately to the people, without reference to such committee."



Mr. MERRITT—I would like to ask if this is not substantially the amendment of the gentleman from Rockland [Mr. Conger] upon which we have just taken a vote?

Mr. ALVORD offered the following amendment to the amendment:

"But nothing herein contained shall prohibit the consideration of any amendment already passed upon in Committee of the Whole, by the Convention upon the incoming of the report of said committee, but such amendment shall not in the Convention be—

Mr. MURPHY—I accept that.

Mr. LAPHAM—I hope this amendment will not pass. No one will fail to see, that it excepts out of the operation of this resolution, the question and the only question which will give rise to protracted debate upon the question of suffrage—we waste the resolution if we put this amendment to it. Do let us preserve the object of the mover of this resolution to postpone, as legitimately should be done, until after we have considered the various propositions upon their merits, the collateral question as to the mode in which they shall be submitted to the people.

Mr. E. BROOKS—I wish to make a single remark. If this resolution prevails, I think its effect will be to disallow members in this Convention to vote upon propositions to submit questions to the people, as it places it in the power of the Convention, when the report shall be made from this committee upon the question of submission, to prevent all debate in the Convention, as by this resolution they prevent debate in Committee of the Whole. Let me illustrate. Gentlemen present their report upon this subject of revision to the Convention and it is in the power of the the majority of this body to move the previous question and cut off all debate upon the subject.

SEVERAL MEMBERS—We have no previous question.

Mr. E. BROOKS—Gentlemen say we have no previous question; but, sir, we have intimations from two different quarters, one yesterday and one to-day, that there is to be a previous question. That will be the precise effect of the resolution if we adopt it.

Mr. LAPHAM—I move that the Convention now take a recess until seven and a half o'clock.

The question was put on the motion of Mr. Lapham, and it was declared lost.

Mr. GRAVES—Is it in order now to offer an amendment.

The PRESIDENT *pro tem.*—The Chair is of the opinion it is.

Mr. GRAVES offered the following resolution:

*Resolved*, That all questions as to the separate submission of any part of the Constitution framed by this Convention be deferred until the whole Constitution is framed by this Convention.

Mr. WEED—May I ask whether this is a substitute for the original resolution, or an amendment.

Mr. GRAVES—I offered it as a substitute for the original.

Mr. MERRITT—I rise to a point of order. That this is a new proposition, and not germane and cannot be offered as an amendment to this resolution.

The PRESIDENT *pro tem.*—The Chair is of the opinion it is proper to offer it as an amendment.

Mr. TAPPEN—I renew the motion, that this Convention take a recess until half-past seven.

The question was put on the motion of Mr. Tappen and it was declared to be lost.

Mr. BELL—I would like to know whether the gentleman from Herkimer [Mr. Graves] proposes that amendment should be added to the other resolution, or whether it is a substitute.

The PRESIDENT *pro tem.*—The Chair understands it is proposed as an amendment, but if it is adopted it takes the place of all that has gone before it.

The question was then put on the amendment offered by Mr. Graves, and it was declared adopted—yeas 43, nays 27.

Mr. WEED—I call for another vote on the amendment of the gentleman from Herkimer [Mr. Graves], as it is evident there is no quorum voting.

The question was again put on the amendment of Mr. Graves, and it was declared adopted, on a division, by a vote of 55 to 31.

The question then recurred on the original resolution as amended, and the Secretary proceeded to call the roll.

Mr. MURPHY—I understand the amendment which has just been adopted, is a substitute for the original resolution?

The PRESIDENT *pro tem.*—The gentleman from Herkimer [Mr. Graves] offered the resolution as an amendment, the Chair decided it was in order as an amendment, but having been adopted it takes the place of all that has previously been considered.

Mr. MERRITT—I would like to ask, whether this leaves everything just as it was before we commenced this morning?

The PRESIDENT *pro tem.*—The Chair is of opinion it is not now in order to ask questions, the call being commenced.

The SECRETARY proceeded with the call, and the resolution as amended was declared adopted by the following vote.

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Ballard, Beckwith, Bell, Bickford, W. C. Brown, Case, Corbett, Curtis, Duganne, T. W. Dwight, Ely, Endress, Evarts, Field, Fowler, Francis, Fuller, Goodrich, Gould, Grant, Graves, Hammond, Hand, Harris, Hatch, Hitchcock, Houston, Huntington Hutchins, Krum, Lapham, A. Lawrence, M. H. Lawrence, Ludington, McDonald, Merritt, Merwin, Miller, C. E. Parker, Pond, Prosser, Rathbun, Rumsey, Seaver, Silvester, Sherman, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—58.

*Noes*—Messrs. N. M. Allen, Barnard, Barto, E. Brooks, Burrill, Carpenter, Cassidy, Champlain, Chesebro, Comstock, Conger, Corning, Daly, Develin, Folger, Hardenburgh, Kernan, Kinney, Livingston, Lowrey, Magee, Masten, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, Robertson, Rolfe, Roy, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, Tilden, S. Townsend, Weed, Wickham—41.

Mr. CONGER—I rise to a point of order, that the vote taken, not being a two-thirds vote on the passage of this resolution, therefore the resolution

is lost, the rules requiring it should be passed by a two-thirds vote. I refer to Rule 39: "No standing rule of the Convention shall be suspended, amended or rescinded, or additional rule or rules added, unless one day's notice of the motion therefor shall have been given; nor shall any such suspension, addition, amendment or repeal be then made, except by the vote of two-thirds of all the members present, or that of a majority of all the members elected to the Convention. But such notice shall not be required on the last day's session. The notice and motion for a suspension shall each state specifically the number of the rule and the object of the proposed suspension, and every suspension on such notice and motion, shall be held to apply only to the particular object or objects specified therein."

The PRESIDENT *pro tem.*—The Chair will inform the gentleman from Rockland [Mr. Conger] that this point of order has already been raised and passed upon in the negative.

Mr. DEVELIN—I rise to a point of order, and I refer the President to Rule 40. I understand this resolution which has been passed changes the order of business. Before this resolution passed we had discussed this question, and this prohibits the discussion, and Rule 40 declares that the rules of the Convention shall not be altered unless by a vote of two-thirds.

The PRESIDENT *pro tem.*—The Chair does not find in Rule 40 any such provision.

Mr. DEVELIN—I have not a copy of the rules before me. I think, then, it is Rule 39.

The PRESIDENT *pro tem.*—The Chair would inform the gentleman the point of order on that rule has already been decided.

Mr. HUTCHINS offered the following resolution:

*Resolved*, That a committee of fifteen be appointed, whose duty it shall be to examine into and report upon the following subjects:

1. The arrangement of the several articles and sections of the Constitution, as amended and adopted.

2. The manner and form in which the Constitution, as amended and adopted, shall be submitted to the people for their adoption or rejection.

3. The publication of the amendments, or of the Constitution as amended.

4. The form of the notice of election.

5. The form of the ballot.

Mr. HUTCHINS—I move that for the present that resolution do lie on the table.

The question was put on the motion of Mr. Hutchins, and it was declared carried.

Mr. BELL—I move that the Convention now take a recess until half-past seven o'clock.

Mr. E. BROOKS—I move to amend by making it half-past four.

Mr. ALVORD—Is this a debatable question?

The PRESIDENT *pro tem.*—The Chair is of opinion it is.

Mr. ALVORD—I will say, as far as regards the recess, I am in favor of a recess until half-past seven. Owing to the position which I have occupied, in common with others in this body, for the past three or four days, one of the important Committees of this Convention has not been able to meet owing to these recesses till four o'clock.

The PRESIDENT *pro tem.*—Will the gentleman from Onondaga [Mr. Alvord] yield? The Chair is of the opinion he was in error in saying this question was debatable. The Chair thinks it is not debatable.

Mr. ALVORD—I supposed the Chair was in error.

On motion of Mr. PROSSER, the Convention adjourned.

SATURDAY, July 20, 1867.

The Convention met at 11 o'clock A. M., the President *pro tem.* [Mr. Folger], in the chair.

Prayer was offered by Rev. WM. BAILEY.

The Journal of yesterday was read by the SECRETARY and approved.

The PRESIDENT *pro tem.* presented a plan by E. D. Smith, for the organization of the Judiciary.

Which was referred to the Committee on the Judiciary.

The PRESIDENT *pro tem.* also presented a memorial from J. C. T. Luddington, asking for a submission to the people of a separate clause for the prohibition of the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. HUTCHINS presented the petition of Thomas Marsh and others, citizens of New York, praying that the Constitution may be so amended as to secure the right of suffrage upon equal terms for men and women.

Which was referred to the Committee of the Whole.

The PRESIDENT *pro tem.* presented a communication from the Auditor of the Canal Department in answer to a resolution of the Convention passed June 26th, relating to the cost, etc., of the Champlain canal.

Which was referred to the Committee on Canals and ordered to be printed.

Mr. McDONALD gave notice of the following amendment of rules:

"This Convention will go each day into Committee of the Whole on any general or special order pending, one hour after it convenes, unless the order of business is reached before that time."

Mr. S. TOWNSEND offered the following resolution:

*Resolved*, that the following substitute for section 2, of article 1 of the present Constitution, be referred to the Committee upon the Preamble and the Bill of Rights as a proper subject for their consideration, viz.:

Trial by jury in all cases in which it has been heretofore used, shall remain inviolate, but jury trial may be waived in all civil cases, in the manner prescribed by law. *Adequate uniform compensation shall be made to all jurors.*

Mr. S. TOWNSEND—The dropping of the term "forever," a presumptuous one either in the statute or in the organic law, after the word inviolate in the existing section, was at the suggestion of one of our most eminent statesmen. The provision as to uniform adequate compensation for jurors is highly necessary from the fact of the diversity of the present compensation, varying in the several counties from 12½ cents in a case tried, to two dollars or more per diem. We have re-

cently seen the State courts in the county of New York greatly embarrassed for the want of a sufficient jury panel present.

Mr. MOORE offered the following resolution:

*Resolved*, That when this Convention adjourns to-day, it adjourn to meet on Tuesday next at eleven o'clock A. M.

Mr. CHESEBRO—I move to amend that, by inserting, Monday evening at half-past seven o'clock.

Mr. ALVORD—I move that the resolution do lie on the table.

The question was put on the motion of Mr. Alvord and it was declared carried.

Mr. GRAVES offered the following preamble and resolution.

It appearing that many members of this Convention are in the habit of absenting themselves from daily attendance upon its proceedings,

*Resolved*, That after Monday the 22d day of July instant, the roll be called every day at its organization.

Mr. BECKWITH—I hope that resolution will not be adopted.

The resolution giving rise to debate, was laid over.

Mr. A. J. PARKER offered the following resolution:

*Resolved*, That it be submitted to Committee number 3, on the Powers and Duties of the Legislature, to inquire into the expediency of so amending the Constitution of this State, as to provide that the Legislature of this State, to which an amendment of the Federal Constitution shall be submitted for ratification, shall be one of which the popular branch shall have been elected after the passage by Congress of the amendment proposed.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That the adjournment of this Convention at the close of the week shall hereafter be regulated as follows: on Saturday next the Convention shall adjourn at 2 o'clock, P. M., to the succeeding Monday at 11 o'clock, A. M.; on the succeeding Friday the Convention shall adjourn at 2 o'clock, P. M., to the following Monday at 7½ o'clock, P. M. and that this order shall be pursued week by week in regular alternation.

Mr. ALVORD—I rise to a point of order, that this resolution is an amendment to the rules, and therefore requires one day's notice.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the point of order is well taken.

Mr. T. W. DWIGHT—Then, sir, I give notice that I shall offer this as an amendment to the rules.

Mr. T. W. DWIGHT offered the following resolution:

*Resolved*, That at a regular meeting of the Convention a majority of the members present may move a call of the Convention, with the same powers and effect as in the like case in the house of Assembly.

Which was adopted.

Mr. BECKWITH offered the following resolution:

*Resolved*, That from and after Tuesday next, immediately after reading the Journal, the roll shall be called and the names of all absentees be entered as absent on the Journal of the Convention.

Mr. SILVESTER—I hope, sir, that resolution will not be adopted.

The resolution giving rise to debate was laid over.

Mr. SILVESTER offered the following resolution:

*Resolved*, That when this Convention adjourns to-day it will adjourn to meet on Monday evening, July 22, 1867, at 7½ P. M.

Mr. ALVORD—I rise to a point of order. That we have just passed upon a matter of the same kind, and laid it upon the table by a vote of the Convention.

The PRESIDENT *pro tem.*—The Chair is of opinion that the point of order is well taken.

Mr. SILVESTER—Then I propose, sir, to alter the resolution to make the hour at 7 o'clock.

The PRESIDENT *pro tem.*—The Chair is of opinion that with that alteration the resolution is in order.

Mr. ALVORD—Then I move to lay the resolution on the table.

The question was put on the motion of Mr. Alvord, and it was declared to be lost, no quorum voting.

Mr. SILVESTER—I call attention of the Chair to the fact that there is no quorum present.

The PRESIDENT *pro tem.*—There being no quorum, what is the pleasure of the Convention?

Mr. ALVORD moved a call of the Convention. Which was lost.

Mr. BICKFORD moved that the roll of the Convention be called.

Which was carried.

The SECRETARY proceeded to call the roll, when the following members answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Beckwith, Bell, Bickford, E. A. Brown, Case, Cassidy, Champlain, Chesebro, Cochran, Comstock, Cooke, Corbett, Corning, Curtis, T. W. Dwight, Ely, Endress, Field, Folger, Fuller, Gould, Graves, Hale, Hammond, Hand, Harris, Hatch, Hitchcock, Houston, Huntington, Hutchins, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Magee, McDonald, Merritt, Merwin, Miller, More, Paige, A. J. Parker, C. E. Parker, Priudle, Prosser, Rathbun, Rolfe, Roy, Rumsey, L. W. Russell, Schell, Silvester, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—70.

Mr. ALVORD—I move, sir, for a call of this Convention, and on that question I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Alvord, and it was declared carried by the following vote:

*Ayes*—Messrs. N. M. Allen, Alvord, Andrews, Baker, Beckwith, Bell, Bickford, E. A. Brown, Case, Cooke, Curtis, T. W. Dwight, Endress, Field, Folger, Fuller, Gould, Hale, Hammond, Hand,

Hatch, Hitchcock, Hutchins, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merritt, Miller, C. E. Parker, Rathbun, Rumsey, L. W. Russell, Van Cott, Wales—37.

*Voices*—Messrs. A. F. Allen, Cassidy, Champ-lain, Chesebro, Cochran, Comstock, Corbett, Corning, Ely, Graves, Harris, Houston, Huntington, Magee, McDonald, Merwin, More, Paige, Parker, Prindle, Prosser, Rolfe, Roy, Schell, Silvester, Smith, Spencer, M. I. Townsend, S. Townsend, Wakeman, Williams—31.

The SECRETARY proceeded with the call.

Mr. CHESBRO—I move that the further call be suspended and that the Convention do now adjourn.

The question was put on the motion of Mr. Chesebro, and it was declared lost.

Mr. MORE—I ask leave of absence for my colleague, Mr. Mattice.

The PRESIDENT *pro tem.*—The Chair is of the opinion that no business can be transacted except that before the Convention.

Mr. ALVORD—As I understand this matter, those who have moved for a call of the Convention up to this point, have done so for the purpose of putting upon the record unmistakably the members of this Convention who are persistently absent from their duties, commencing Friday and up to the next succeeding Monday or Tuesday. I, for one, believe it is the duty of the members of this Convention, unless an absolute and indispensable necessity requires otherwise—

Mr. CHESBRO—I rise to a point of order. That there is no question before the Convention.

The PRESIDENT *pro tem.*—The point of order is well taken.

Mr. ALVORD—I move to suspend the further call, and desire to give my reasons therefor.

Mr. KINNEY—I rise to a point of order. That that question has just been decided by a vote.

The PRESIDENT *pro tem.*—The point of order is well taken.

Mr. SILVESTER—I desire to ask leave of absence for Mr. Carpenter, of Dutchess, who is necessarily absent.

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is not now in order.

Mr. MERRITT—If I understand the call, it only lacks ten of a quorum. Would it be in order to direct the Sergeant-at-Arms to proceed to the different hotels and see if it is possible to find a quorum in the city.

The PRESIDENT *pro tem.*—It does not require such a motion.

Mr. ALVORD moved that the absentees be called.

The SECRETARY proceeded to call the absentees, when the following members were found to be absent.

Messrs. Archer, Armstrong, Baker, Ballard, Barker, Barnard, Barto, Beadle, Beals, Bergen, Bowen, E. Brooks, E. P. Brooks, J. Brooks, W. C. Brown, Burrill, Carpenter, Cheritree, Church, Clark, Clinton, Colahan, Conger, Daly, Develin, Duganne, C. C. Dwight, Eddy, Evarts, Farnum, Ferry, Flagler, Fowler, Francis, Frank, Fullerton, Garvin, Gerry, Goodrich, Grant, Greeley, Gross, Hadley, Hardeburgh, Hiscock, Hitchman, Jarvis, Kernan, Ketcham, Krum Larremore, Law, A. R.

Lawrence, Lee, Livingston, Loew, Lowrey, Masten, Mattice, Merrill, Monell, Morris, Murphy, Nelson, Opdyke, Pond, Potter, President, Reynolds, Robertson, Rogers, Root, A. D. Russell, Schoonmaker, Schumaker, Seaver, Seymour, Sheldon, Sherman, Stratton, Strong, Tappen, Tilden, Tucker, Veeder, Verplanck, Weed, Wickham, Young—90.

Mr. ALVORD—I move a suspension of the call, and I desire to give my reasons therefor. When I was interrupted before by a point of order, which was declared to be well taken, I was about to say that there seems to have been a chronic disease upon this subject of the business of the Convention on the part of certain gentlemen during our entire sittings here, and it has resulted, not injuriously possibly in the first stages of the Convention, but entirely so subsequently, and has virtually confined the sittings of this Convention to four days in the week, and the fourth of those four days has been absolutely used up by the anxiety of parties within the limits of this Convention to get through the business and go away, even on the fourth day, if possible. I recollect, sir, another thing. A distinguished gentleman, a delegate to this Convention, who resides in one of the counties contiguous to New York, Westchester, or some other—I do not recollect which—has persistently, again and again, called the attention of this Convention to its neglect of its duties by their constant adjournments. I recollect also with regard to that distinguished individual, that at least for the last two, and I think three, Fridays and Saturdays and subsequent Mondays in each week, he has been absent from his place in this Convention. I recollect another thing. But a few days ago there was a division on the call of the ayes and noes upon the question as to whether we should adjourn or take a recess, and upon that division the vote stood fifty-five for the adjournment and seventy-one against it; and the result of that vote was, we were compelled to take a recess, and held a session which lasted very late in the evening. I, sir, took the precaution to have the matter determined in reference to those who were within the body of this Convention after that recess; and I found that sixteen of the seventy-one who voted against the adjournment were absent from this Convention during the entire of that time. If they had voted as they acted the result would have been an adjournment, carried by seventy-one votes in favor of it to fifty-five against it. So that those of us, the fifty-five who voted for that adjournment, were compelled by the action of sixteen men, who paid no attention to their own action, so far as regards an adjournment, to come here and fritter away a large portion of the evening. I hold this to be the duty of the members of this Convention. I do not speak in laudation of myself, but I speak of what I deem my duty as a public servant, in this position—that no man should absent himself from his duties in this chamber unless he could give a good and sufficient reason, and that good and sufficient reason should be given beforehand, and he should ask permission of this Convention thus to absent himself. But no possible excuse can be given by gentlemen who thus inconvenience the members who have come here to do the duties which the people called upon



them to perform; and there will be no remedy for this unless this course is pursued. We are satisfied of the fact that there is business coming in upon us here each and every day so that hardly any of us can see the end of it, or when we shall get through the work we are called upon to perform. If it is impossible, after all our deliberations, after all our thought and our best intellect shall be given to this subject, that we should conclude our labors in time to be given to the people for their decision, we should certainly take away from those who could blame us in regard to the matter the argument that we were called upon within certain days to do and perform this work, and to point us to the record to show that one-half of that time had been frivolously and uselessly wasted by this Convention. Again, sir, men who upon the pretense of having committee work to do, or having an abundance of work to do, say, therefore, it is no matter if the body of the Convention go away, yet the committee work can be done, ought to know, if they do not know, that the moment the voice goes out that the Convention has adjourned that moment it is an utter impossibility to convene any committee within the body of this Convention. They go away with the adjournment, and your committees have to go over not only until Monday night, if we adjourn until Monday, but until Tuesday afternoon, and sometimes until Wednesday; so that the result is, through this inconvenience many important committees of this Convention do not have over two or at the most three sessions a week. If we pursue this course in the future we shall of necessity either be compelled to bring up in the latter days of this Convention our work illy done and put it together hastily, in order to put it before the people, or else go back to the people not having done our duty. And, sir, I wish, in addition to what I have said in this regard (meaning in good faith this motion to suspend the call) to say, that if it is in the power of the body of this Convention, and if the members of this Convention who remain here in Albany to do and perform their duty will stand by me, I will upon any subsequent occasion like this move a call of the house, and shall persist with their aid to carry it to its full extent and meaning.

Mr. M. H. LAWRENCE—I entirely concur with the sentiments expressed by the gentleman from Onondaga [Mr. Alvord]. Many delegates come here from remote parts of the State, and when they sit here from day to day and see gentlemen come here seemingly only for the purpose of making speeches to gain some political advantage, and then seek the first opportunity to run away home, when it is convenient for them to get there, it is certainly unpleasant when we are compelled to stay here, those of us who cannot get home conveniently. I believe if gentlemen looked into the matter they would see that those gentlemen who wish to adjourn the most, are those who live convenient to the Capitol so they can easily rush down to the steamboat or cars and leave for home. It is not so, I am happy to say, with this entire Convention. The people have sent us here to make the organic law of the State, and I believe that those gentleman who have come here simply

for the purpose of political advantage will find themselves mistaken in this matter. The people are not indifferent to this Constitutional Convention. I can assure gentlemen they have it at heart. They have sent us here for the purpose of revising and amending the organic law of the State, and they will hold gentlemen accountable for their action here. The people are not desirous of obtaining immense speeches, long winded speeches, which are but a mere rehash with nothing new in them. They cost too much to the people of the State. I wish to say to some gentlemen who perhaps are rich in non-taxpaying bonds, that they had better look to it to see that this Convention shall do something to relieve the people of this State from their onerous taxation. I tell gentlemen if they put any more increased burdens upon the people of this State by taxation, that they had better look out for their non-tax paying securities. I think for myself, though I may be unsophisticated in this matter—but I think the people really believe that the Constitution needs amendment and altering; I believe we can do it, so as to be a blessing to the people of the State. When I first came here to this Convention I felt gratified and pleased to see the harmony that seemed to prevail, gentlemen were so cordial, and seemed to be so happy in each other's society; there was to be no politics in this hall; it was to be all done harmoniously. I said to my friends, when I went home (for I went home at one of the adjournments), "we are going to work harmoniously; we all agree; we are acting with a sincere desire to improve the Constitution of the State." But in writing home since, I had to tell them I was afraid a different state of things was rising up in this Convention, and I have thought in the past week, when I have seen men rise up here and discuss this question, seemingly for the purpose of trying to gain some political advantage, that some only came here for that purpose. I represent, sir, men of radical political views; they have sent me here not for a political purpose, but for the purpose of trying to improve the Constitution of this State. I have been glad to see the action which has been taken to-day, and I trust it will have a salutary effect upon members of this Convention.

Mr. GOULD—I entirely concur in what has fallen from the gentleman from Onondaga [Mr. Alvord], but I wish to inquire whether the absentees are not now in contempt.

The PRESIDENT *pro tem.*—The Chair will decide that question when it comes up.

Mr. GOULD—Then I shall presume they are in contempt—

Mr. LAPHAM—Will the gentleman from Columbia allow me to call his attention to Rule 33, which is as follows:

Rule 33. In cases of the absence of a quorum at any session of the Convention, the members present may take such measures as they may deem necessary to secure the presence of a quorum, and may inflict such censure as they may deem just on those who on being called on for that purpose shall render no sufficient excuse for their absence.

Mr. GOULD—That is a very good and sound rule and one that comes to the very point. I happen to know that Mr. Mattice, of Greene county, is

necessarily absent on account of the sickness of his wife. It seems to me, under that rule, it is perfectly competent for the minority who are now present to excuse him, and thus purge him of any contempt. I think that is due to him under the circumstances, and from motives of common humanity; and therefore I move that Mr. Mattice be excused, with the permission of the Chair.

The PRESIDENT *pro tem.*—The Chair has no power to put the motion; and there being no quorum present, no business can be done.

Mr. GOULD—Does not the rule expressly provide that a minority may pass censure?

The PRESIDENT *pro tem.*—That is only when the party is called up before the Convention, and then they can only be purged of contempt by giving a satisfactory excuse.

Mr. GOULD—The rule does not say so.

The PRESIDENT *pro tem.*—That has always been the practice under the rules. The absentees are brought in by the Sergeant-at-Arms, and as they come before the Convention they give their excuses, and it is for the Convention to excuse them or not.

Mr. BICKFORD—I would wish for one that the gentleman from Onondaga [Mr. Alvord] would not abandon his call. I, for one, would like to see the doors shut, and some at least of the absentees brought in, that the Convention may show that they are in earnest in this matter. I, for one, have attended promptly at all times; I believe on every occasion on which the roll has been called, my name has been answered to. I am not disposed to treat the absence of gentlemen, whose business it is to attend here, as a trifling matter. I wish therefore that the call should be persisted in, that the doors should be closed, and the Sergeant-at-Arms sent to bring in members, that we may show we are determined now to proceed to enforce the authority of this Convention. We must begin some time. The Convention, when it was full, yesterday, ordered that a session be held at eleven o'clock, and we are here and met in pursuance of that order, and those who are absent should be made to face the music, and brought in, and if they have any good excuse we will then hear it; if not, we will censure them as we think they deserve.

Mr. ALVORD—I would ask of the Chair or Secretary, whether there are any of the gentlemen whose names have been called as absentees, that have been excused by any action of the Convention. Mr. Brooks has for one, certainly. That should appear on the record.

The PRESIDENT *pro tem.*—The secretary informs the chair that Mr. J. Brooks and Mr. Pierrepont have been excused.

Mr. WAKEMAN—I would like to inquire, if we adopt the resolution offered by the gentleman from Onondaga [Mr. Alvord] for a suspension of the call, whether those who are absent will be in contempt then?

The PRESIDENT *pro tem.*—The Chair is of opinion they will not.

Mr. WAKEMAN—Then I am in favor of the last motion of the gentleman from Onondaga [Mr. Alvord], but in future I am willing to go with him or any other gentleman in favor of compelling members to stay here and discharge their

duties. I think, however, our action heretofore has been such as rather to give license to members to go away; but if we take this action and give this public notice that hereafter the rule will be enforced it will have a salutary effect. I therefore shall vote for the suspension of the call.

Mr. CHESEBRO—After the remarks which have been made by the gentleman from Onondaga [Mr. Alvord], I think it is time the order of business now before this Convention be suspended. It is well known that it has been the habit of members of the Convention on Friday evenings to leave on the theory that no business would be done on Saturdays, and there has not been on the part of the Convention any action which has been a notification to any of them that such a course would be pursued.

Mr. ALVORD—Will the gentleman permit me to ask him a question?

Mr. CHESEBRO—Certainly.

Mr. ALVORD—I ask him if this Convention did not through me take similar action within the last two weeks?

Mr. CHESEBRO—They may have done so, but not while I was present.

Mr. ALVORD—The gentleman was one of the absentees.

Mr. CHESEBRO—Quite probably I was in the same category with those who are now absent. I know quite a number of gentlemen have left this Convention, and some of them are now holding court in the cities of New York and Buffalo. They went away upon the theory that they would not be called to account, but as they will now receive from this action of the Convention an admonition with regard to the future; and believing that will be sufficient I move this Convention do now adjourn.

The question was put on the motion to adjourn, and it was declared lost.

Mr. T. W. DWIGHT—I hope the call will be suspended. The resolution which I introduced this morning, I think, will meet the difficulties in this case—that every alternative week we should adjourn from Friday till Monday, and on the intermediate weeks from Saturday till Monday, and gentlemen can then arrange their business accordingly. If that resolution shall be adopted I think it would be proper to hold gentlemen to a strict attendance, but I think we have accomplished now all that it is proper to accomplish at this stage.

Mr. COMSTOCK—I move that the Convention do now adjourn until Monday evening at seven and a half o'clock.

The PRESIDENT *pro tem.*—There is no quorum present, and it is not in order.

The question was then put upon the motion of Mr. Alvord to suspend the call, and it was declared to be carried.

Mr. N. M. ALLEN—I move that the Convention do now adjourn.

Mr. COMSTOCK—I ask to be excused on Monday—

The PRESIDENT *pro tem.*—The Chair has no power to excuse the gentleman; and there being no quorum present, it is not now in order.

Mr. M. L. TOWNSEND—I desire to ask a question of the power of the Convention, because I am uninstructed—

Mr. ALVORD — I call the gentleman to order. The question was then put upon the motion of Mr. Allen to adjourn, and it was declared carried. So the Convention stood adjourned.

MONDAY, JULY 22, 1867.

The Convention met at 11 o'clock A. M.

The Journal of Saturday was read by the SECRETARY.

Mr. S. TOWNSEND—As I understood the reading of the Journal, it is not stated that the resolution which I had the honor of offering on Saturday was referred on my motion to the Committee on the Bill of Rights.

The Journal was ordered to be corrected in that respect; and there being no further objection thereto, it was declared approved.

Mr. C. L. ALLEN presented a petition from citizens of the county of Columbia, praying for a clause in the Constitution to prohibit donations to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. CASK presented a petition of Rev. W. P. Canfield and ninety-six others, citizens of the town of Cazenovia, on the same subject.

Which took the same reference.

Mr. LAPHAM offered the following resolution:

*Resolved*, That it be referred to the Committee on Banking and Insurance to inquire and report as to the necessity and propriety of requiring the Legislature to provide by law the form of a policy of insurance, and rendering all provisions in such contracts void except those prescribed in such form.

Which was referred to the Committee on Banking and Insurance, etc.

Mr. WALES offered the following resolution:

*Resolved*, That the following amendment be made to the fifth section of the article reported by the Committee on the Organization, etc., of the Legislature, viz.:

"The salary of one thousand dollars shall be for a full attendance upon all the sessions of the Legislature for the year, or upon actual duty with some of its committees; and the amount paid to each member shall bear the same proportion to one thousand dollars as his actual daily attendance shall bear to the whole number of days the Legislature shall have been in session; and the Legislature, at its first session after the adoption of this Constitution, shall prescribe the manner of ascertaining the actual attendance of the members respectively upon each session, and the time and manner of payment of their respective salaries.

Which was referred to the Committee of the Whole.

Mr. A. J. PARKER offered the following resolution:

*Resolved*, That it be referred to Committee No. 3, on the Powers and Duties of the Legislature, to inquire into the expediency of prohibiting the authorizing by the Legislature of any consolidation of Railroad corporation, where the aggregate capital of the companies consolidated shall exceed fifteen million of dollars, and prohibiting a consolidation in any case without the written consent of three-fourths of all the stockholders.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GREELEY offered the following resolution:

*Resolved*, That the Convention will proceed on Wednesday, at 1 P. M., to act upon the article reported by the Committee on the Rights of Suffrage as it shall have been reported from the Committee of the Whole. Every amendment that shall have been or which may be proposed, shall be separately presented, and five minutes allowed the mover to explain and commend it, with a like opportunity for one reply, when the vote shall be taken thereon. All amendments having thus been disposed of, the vote shall be taken by yeas and nays on the article itself.

Mr. PAIGE moved to substitute "Thursday" instead of "Wednesday."

Mr. GREELEY—I changed the time expressly to suit the convenience of the gentleman from Schenectady, [Mr. Paige] as he said he would not be ready by Tuesday. I leave it to the Convention to decide the time.

Mr. CHAMPLAIN—I think that this resolution ought to be laid over.

The resolution giving rise to debate, it was laid on the table.

Mr. E. A. BROWN offered the following resolution:

*Resolved*, That the Committee on Cities, etc., be respectfully requested to inquire and report as to the propriety of a constitutional provision prohibiting the enlargement of the boundaries of cities by amendments of their charters under acts of the Legislature or otherwise, without the previous assent of a majority in number of the tax payers representing more than one-half of the assessed value of the property in the district proposed to be annexed to such city, and also prohibiting taxation of such annexed district for the pre-existing indebtedness of such city.

Which was referred to the Committee on Cities, etc.

Mr. LUDINGTON offered the following preamble and resolution:

WHEREAS, The present Capitol of the State, with the improvements recently made in the Assembly Chamber therein, will, for many years to come, meet all just and reasonable requirements of the people of the State, and

WHEREAS, Heavy pecuniary burdens, both of general and local character, chiefly consequent upon the great civil war through which we as a nation have just passed, and bearing heavily upon the resources of the people; and

WHEREAS, Recent legislation has been had, and further legislation is in contemplation, having in view the expenditure of many millions of dollars for the purpose of building a new State Capitol; therefore

*Resolved*, That the Committee on Finance be requested to inquire into the expediency of so amending the Constitution as to prohibit any further appropriation of money for the purpose indicated in the foregoing preamble, for the period of five years, or such other period of time as will better enable the people to make such expenditure.

Mr. A. J. PARKER—I shall have occasion to discuss that resolution; therefore I propose that it lie over.



The resolution giving rise to debate, it was laid on the table.

The Convention then resolved itself into a Committee of the Whole on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the Chair.

The CHAIRMAN announced the pending question to be upon—

Mr. CASSIDY — If I am in order, I propose to offer an amendment.

The CHAIRMAN — It is not in order, there being an amendment now pending before the Committee.

Mr. CASSIDY — I propose to offer an amendment on behalf of my colleague [Mr. Conger]. I shall, therefore, reserve it until another time.

Mr. CASSIDY — Mr. Chairman, as one of the Committee on Suffrage, opposed to the article under consideration, I desire to be heard in vindication of the minority report. And first, let me correct an error copied from the Convention Manual into that report. It was in 1860 that the last submission of negro suffrage to the popular vote was made, resulting in 337,984 votes against to 197,503 in favor thereof. It was in 1857 that the amendment to that effect was forgotten in the pigeon holes of the Executive office. In discussing this subject, I shall not attempt to keep track of the discursive arguments with which gentlemen have illustrated their views, nor seek its solution in the results of comparative anatomy or in the problems of metaphysical politics. There is to me a mocking irony in the citation of the Declaration that "all men are born equal," and that "government derives its just powers from the consent of the governed," if I suppose that the representatives of thirteen slaveholding and slavetrading colonies applied it to the Negro and the Indian. There is a grim sarcasm in the citation of the spectacle in the cabin of the Mayflower, of a body of men framing a form of government for a land they had never seen, and proclaiming their dominion over the people in possession of it, and whom they were destined to exterminate. Yet these and the scenes upon our western border, where the rifle of the white settler clears the path of civilization through the hunting-grounds of the red man, have been cited to prove not the equality of men in their respective communities, but the equality of races! I leave such illustrations to refute the arguments in behalf of which they are advanced. Nor shall I attempt to analyze the delusion under which gentlemen have sacrificed to a favorite theory not only logic and history and philosophy, but the sympathies of kindred and of race. We have heard eloquent gentlemen here in their eulogies of the negro "smoothing the raven down of darkness till it smiled"; yet when the pleading voice of women was addressed them closing their ears—turn from the suppliants "and that fair mountain leave to batten on this Moor." "I will not ask Jean Jacques Rousseau," nor any other political philosopher under what clause of the social compact we derive our power to act here. It is enough for me that for the fourth time in the history of the State a Convention is called to revise the organic law. We, its members, are delegated by the existing constituency

to revise an existing Constitution, and to submit our conclusions to the power that made us, for its approval or rejection. That is the grant and the limit of our authority. As I understood the repeated votes of last week, it is the purpose of the majority not to submit this clause of the Constitution to a separate vote. The *plebiscitum* of 1846, granted again in 1860, is to be withheld. Instead of trusting the people with the decision of the subject, by itself, it is to be carried by a "log-rolling" process—a device familiar to these halls; but which we were sent here to purge our legislation of, and not to countenance and perpetuate by our example. In parliamentary law, when a proposition is divisible it must be put separately; and shall we adopt another rule in the great popular deliberation to which our work is to be subjected? It is a denial of justice to the people! In the article reported by the majority of the committee we have salutary provisions for checking bribery at the polls, and for securing uniformity in the laws concerning registration. Are we to forfeit these unless we accept unqualified colored suffrage? We have unfortunately in the same article clauses which will deprive of their votes in the next presidential contest, and in the succeeding year, some twenty thousand naturalized citizens. Are those who object to this feature, and yet approve of colored suffrage, to vote against the latter in voting against the former? Already we have intimations of schemes of a strongly centralized State government. Are we to accept them for the sake of the negro? Are we to forfeit them, if we deem them wise and beneficent, because we encounter the prejudices against him? We have sacrificed in his cause already millions of treasure and lives, the Constitutions of ten States, and what is most precious in our federal system. Are we to lay the reforms we here propose at his feet, and make them the sport of his fortune? I tell gentlemen they cannot thus cheat the people. This question must come before them. It must come before them in the very shape in which the gentleman from Kings [Mr. Murphy] placed it, by his amendment—upon the property qualification. The issue to be passed upon by the people in the election this fall will be the alternative between the Constitution of 1846 and that of 1867. You cannot escape this. If the clause we mature is rejected, with the rest of the instrument we propose, then section One of article Two of the present Constitution will stand. All that has been asked here is that, as this is the inevitable issue, you take it out from the text of the Constitution and present it to be passed upon by itself. And let me say here, not in order to defend the existing requirement, but in defense of the revolutionary patriots who proposed it, and of the good and wise men of the Conventions of 1821 and of 1846 who permitted it to stand, that it can hardly be regarded as a property test. In a country of superabundant land this requirement—equivalent to less than a £4 rent—comes down below the standard for which John Bright and his associates were, a year ago, contending in England. It was intended by us to define fixity of residence, and to distinguish the freedmen of this State from the refugees of sister commu-



nities. It was a boon to the class to which it was extended; and it was retained in this form in 1846, lest if presented as a naked question of colored suffrage it should be taken away altogether. But we are told that the patriots of the Revolution, the statesmen of 1821, the constitutional reformers of 1846 were behind the present time. The age has received an enlightenment unknown to them! And there is some truth in this doubtless; though much false boast beside. But when they add that it is in contravention to the spirit of the age to recognize the difference of races among men, they belie the present as much as they have misrepresented the past. The spirit of the age! There is not in the world a nation worthy of a name, there is not a State possessing institutions deserving respect, that does not recognize the difference—the organic distinction—of race. England governs possessions in Asia, Africa, and in Australia, tenfold greater than her own in territory and population. She is, according to definition of Disraeli, more an Asiatic than a European power. France colonizes Algeria, and seeks to subdue Farther India and Cochin China. Denmark and Holland own islands in the East and West Indies, and they rule them absolutely, refusing to the native races any participation in government. The proud boast of an English statesman, so nobly paraphrased by an American Senator, speaking of England, that "her morning drum beat following the sun, and keeping company with the hours, circles the earth with one continuous and unbroken strain of the martial airs of England," was uttered in the pride of domination of a ruling race. It is the tap of the drum, the bugle call to arms, the reveille to the garrisoned troops, that proclaim the supremacy of the English over distant continents and alien races. It is the mouth of the cannon that asks the consent of the Sepoy. It is the point of the bayonet that wins it from the Sikhs. England tolerates no partnership with inferiors in the great trust of government. She would no more admit her Hindoos, her Caffres, her Australians, to vote than she would invite to a European congress the king of Abyssinia or of Dahomey, or the cannibal chiefs of New Zealand. She would no more consult these inferior subjects than we have the Esquimaux, whom we have purchased wholesale, without their knowledge or consent, and whom we propose to govern wholly according to our views and with entire indifference to theirs. It is a justification of our trust in the people that time has shown that what were once called the prejudices of the multitude are the inspiration of a people, and are sustained by the conclusions of science. The question of race is the overruling one in the estimation of political philosophy. Already is Europe endeavoring to reconstruct its map, and constitute nationality upon the basis of community of language and of origin—to unite under one autonomy the German family, in another the Slaves, in another the Scandinavian. We have seen the fruits of the theory in the restoration of Italy as one nation, in the partial unification of Germany. And yet the difference between Celt and Saxon, Latin and Slave are but those of a common family and are reconcilable. The divergence of the African, Indian

and Asiatic from the white and from each other has its source far back in the womb of time and cannot be obliterated for centuries of centuries. It is fortunate for the cause of humanity that the progress of the world has not been intrusted to such a partnership of races. What would have been its civilization if Europe in the past had been tied to Asia and to Africa? What would have been our own progress if the governing class of this Republic had been of this motley texture? We have the answer in the career of the mongrel republics below us, where the European element ceasing to predominate, religion runs into fetichism; politics into anarchy, and the dreams of humanitarianism end in tragedies of blood. "Better fifty years of Europe than whole cycles of Cathay." Better one year of American liberty under the institutions of Washington, than centuries of such civilization as these anarchies present. Those who invite us to emulate them, point backward. They would make us retrace the path of improvement, and in the name of progress march us back into chaos. I do not say this in antipathy to the colored race. Without trenching upon the theological question, or accepting any particular ethnological theory, I may say that I regard them as a younger race—susceptible of improvement, but as yet only fit for a state of pupilage and protection. I think that I may cite, in support of this view, the leading minds of Europe. Michelet thus speaks of them; Darwin, Huxley and that school assign them that inferior place; Herbert Spencer recognizes the education of races by the reiteration of impressions made hereditary by their action upon successive generations; Agassiz, denies the common origin of Indian, African and white; Draper speaks of the tropic races as children in character. Unfortunately for these children they attain the age of passion before the age of reason. Like all young people and young races they have great imitative powers, and when mixed in with a largely preponderating mass of whites, conform outwardly to the higher standard. Where they prevail in numbers, as in some sections of the Union and in the adjacent islands, they speedily fall back into barbarism. They have been developed, normally as a race, no higher than the tribal condition, and their tendency is always to recede unto it. If we regard this question in its broader view—looking beyond the five thousand men for whom it is here asked—and estimate it as a national question, affecting every State, north and south, and still more vitally in the future, the States of the Pacific—we shall realize its true proportions. We have seen what a population Ireland and a few provinces of Germany have been able to pour upon our shores. But imagine the Asiatic tribes set swarming and lighting upon our Pacific slope. Imagine them claiming and receiving an award of citizenship, framing laws and constitutions, determining the course of government, and the character of public opinion, bestowing offices and honors, holding courts and commanding armies! Imagine the prevalence of Oriental vices, the obscene idolatry of the masses, the polygamous family, the violence and cruelty of the great, the abjectness and servility of the commonalty. What a future of American citizenship does not that present! And yet every argument for the equality

of the African is a plea for the more advanced Asiatic. Already our brethren in that section feel the alarm at the approaching invasion; and the Republican State Convention has declared for the exclusion of the people, not only from citizenship, but from residence. As an example to the States, I would repel here, the African, the Indian and the Asiatic from any partnership in the great trust of government. I would preserve it to the race which alone may be said to have made the history of the world; and which alone has framed institutions for the preservation of individual and communal liberty. To trust it to the barbarous and untrained hands of fresh emancipated slaves would be to put back the clock of the world for centuries. If the effect of the revolution, through which the country is now passing, shall be to give up the Gulf States to a hybrid African population, and to surrender the Pacific region to the Asiatic hordes, then the great accomplishments of our statesmanship and of our arms, the acquisition of Louisiana and Florida, of Texas and California, are thrown away. We won these fertile and golden fields for what? To take them from France and Spain and Mexico, and bestow them upon the negro and the Asiatic? Nor is the effect of our fatuity limited to these regions. We submit our own State to the rule of these hordes. The black and yellow Senators in the Federal Congress will help legislate for New York, dictate the foreign diplomacy of all the States, regulate commerce, and administer internal laws. Who does not see that with such an element in our councils we shall go backward in legislation, reviving the cruel penal statutes, the restrictions, the bigotries, the trivial pomp and costly ceremonial of the dark ages, and in our best mood, re-enacting the patriarchic and protective system adapted only to immature communities. This is not progress! It is retrogression in government. The refusal to consult the people in regard to it, is but another step in that evil policy which has, in recent years and under evil counsels and the pretenses which our war has afforded substituted force and fraud for the rule of opinion. We must look for progress, through order, in the direction in which our fathers entered it, not in the excess of government, but in the relegation of the State to its fewest functions, and its simplest forms. The individual man, the family, and the voluntary associations which these form, have advanced thus far, the progress of society over the hindrances of States and governments, and their machinery of force; and to them we must look for future progress. If we are to accept of any new partnership, let it be the fair hand of woman, rather than the dusky palm held out to us though bearing gifts—proffering to some, exemption from taxes, to others offices, to localities schemes of improvement, to the speculating class increased debt. But rather let us pursue it alone, for her sake and for the inferior races, who share all the benefits of our progress and invention—for whom as well as for us the press speaks with multitudinous voice, the telegraph sends its lightning message, and steam performs its gigantic labors in mill, on rail, on river and ocean, and in the mines within the earth. Let us commit to

this race and to the agencies it has created, the destiny of the future; and History will unfold upon this hemisphere chapters more brilliant and beneficent than any she has yet recorded. The giant form of this republic already stretches across the continent, spanning the hours. When the sunrise gilds its brow, its feet are yet shrouded in midnight. Let us not taint its blood by this poisonous infusion! Do not seek to tie down its immensity with the lilliputian devices of faction. Do not try to interrupt its destiny, as the African, in the eclipse, endeavors to arrest the movement of the planets, by charms and incantations, by the noise of drums and the din and clamor of bewildered crowds.

Mr. M. I. TOWNSEND.—Several gentlemen on this floor have intimated that I was mistaken in charging that Professor Agassiz, at the city of Charleston, when the behest of slavery seemed to require the announcement, laid down the doctrine that the colored race were distinct in their origin from the white race. I am able now, fortunately, to strengthen my position by quoting the very words of that distinguished naturalist from his own hand. They are as follows:

"The only ground I may have given to question the soundness of my views concerning the different races of men, is the opinion which I have always maintained, and which I still hold now, that the different types of the human family have an independent origin one from the other, and are not descended from common ancestors; but this idea I do not apply to the negroes only, but to the Indians, the Chinese, the Hindoos, the Australians, etc., as well. In fact, I believe that men were created in nations, not in individuals: but not in nations in the present sense of the word; on the contrary, in such crowds as exhibited slight, if any, diversity among themselves except those of sex."

I do not propose here to quarrel with the opinion of Mr. Agassiz, but to state it. The gentleman from Oneida [Mr. T. W. Dwight] who is not now in his seat, has endeavored to vindicate the soundness of the opinion heretofore put forth by Professor Lieber. I think my friend, with all his labor, has not succeeded in showing that distinguished scholar to be consistent with the ideas of the present age, if consistent with himself. I understand Professor Lieber to hold there are three races that are not susceptible of improvement—the Bushmen, the Hottentots and the Papous. I entirely differ with him. I know but one race—but one variety of the human race that is not susceptible of improvement, and that variety is called the "Bourbons." It is the only race I have ever seen in which individuals could not be found who had made considerable advance from the position in which their associates and themselves were born; but when you find a genuine Bourbon, he "learns nothing and forgets nothing." The gentleman from Albany [Mr. Cassidy], who has just taken his seat, and several other gentlemen upon this floor, esteem the African race so low in position that we need not look for them to assume a position equal with ourselves in the world of intelligence. The gentleman from Albany [Mr. Cassidy], has not told us what his views were in regard to the origin of the

human race, whether we are of a common origin, or whether our origins were diverse. But the gentleman from Kings [Mr. Murphy], and the gentleman from Rockland [Mr. Conger] came down to the substantial stand point of the christian religion, and I have no doubt if my friend from Albany had gone *in extenso* to give his views he would be compelled to come down to the substantial doctrine of revealed religion. Now, sir, if we adopt the christian revelation, if we adopt the sacred history as the friends of slavery, and the enemies of the black race in this country have always done, we shall be compelled to trace the origin of the negro back to Ham, the son of Noah. I accept that as his origin. It is the origin as shown by history and by christianity. Now, I wish, as the gentleman from Albany [Mr. Cassidy] is the only one of those gentlemen here present in this hall this morning, to call his attention to the fact that the sons of Ham constituting the population of ancient Egypt, built upon the banks of the river Nile, more than three thousand years ago, structures of a magnificence and proportion, such as have ever been and are even to the present day a wonder. For more than six hundred miles these edifices are now standing along the river Nile, and it seems they shall stand as the wonder of the world while time itself shall last. But, yet, as I have said, the people of Egypt were the sons of Ham, not the same variety of the race to which the colored population of this country belong. True, they had not been subjected to the climatic and local influences that have produced the form, feature and color of the African race as they exist among us; but they were of the race to which this African family belong—of the sons of Ham. The gentleman from Kings [Mr. Murphy] read from Jefferson the idea that the sons of Ham were unable to make mathematical calculations. I would like to see any scholar of the present day undertake to tell us what amount of mathematical power and capacity must have been possessed by the men who built the pyramids? What amount of learning and intelligence must be possessed by the men who built the temples of Thebes and constructed the Catacombs? What amount of progress in art was necessary to make those applications of color that stand in the Catacombs to-day, as perfect as when they were spread upon their walls. Aye more; the very letters by which this slander was uttered upon the sons of Ham, were invented by a son of Ham, by a Phoenecian—by Cadmus. And where were the ancestors of the gentleman from Kings [Mr. Murphy], and the gentleman from Rockland [Mr. Conger], and the gentleman from Albany [Mr. Cassidy], and my own ancestors of that day? They were living in a darkness so dense that not a single ray of light has come down from them to the age in which we live. Not that the sons of Ham were superior to our ancestors in essential characteristics, but the sons of Ham at that day had enjoyed some of the advantages that we in this day enjoy a thousand fold increased. It is circumstances that has made us to differ, and until the spread of the christian religion among the Teutons from whom I derived my origin, and among the Celts from whom some other of these gentlemen derived

their origin, there was but very little that our ancestors could boast over the negroes of Africa of the present day. Men should not forget the pit from which they were digged. Men sometimes do. My friend from Albany [Mr. Cassidy] to-day has put himself substantially in that position by quoting for our imitation the conduct of Great Britain toward subject races. If, as he has argued, it be right for England to pursue the course she has done toward her subject races, how can he avoid the argument that England, because she has the power, is justified in what she has done toward the Celtic race. He may satisfy his own mind, for there are minds formed in that way, but he has not satisfied mine. I do not believe the negro to be any better than the white man, nor more elevated than the white man, nor more learned than the white man; but I believe it is decided by history, and so it has always been true in this land, that the colored man is like the rest of the race. I will not speak of the rest of the State, but I will speak for the county of Albany, and I will speak for the county of Rensselaer—that the colored population of these counties are equal in point of morality, in point of intelligence, in point of quiet living, in point of industry and frugality, to any laboring population that we have. And there are specimens among them in my own city serving as clerks with eminent success, and one a clergyman. Certainly the rest of the clergy in my city, of any faith, Catholic or Protestant, will not hold him to be their inferior in any characteristics which marks the gentleman. We have also a surgeon, raised in our midst, who has held the rank of surgeon in the United States Army, who is now a successful surgeon in the city of Charleston. I say this not as putting this subject above every other subject, but as putting those people in a situation which shows that they ought to enjoy the rights and privileges of citizenship, and all the advantages secured in this country, to those willing to pursue those courses which lead to prosperity. But I have one word to say to the gentleman from Rockland [Mr. Conger]. The gentleman from Rockland [Mr. Conger] has endeavored to frighten us from doing justice to the colored race by assuming two or three positions which certainly cannot be maintained. The gentleman took occasion to sneer at the suggestion made by several gentlemen upon this floor, that government, when rightfully organized, was the result of the social compact. I said in some earlier remarks which I made here, that some gentleman had taken the picture of the divine right of kings and cut out the divine right of kings and put in the divine right of society in its place, but the gentleman from Rockland [Mr. Conger] has not taken the trouble to cut out the head. He says "the sovereign electors in the State of New York hold their power by the same right that Queen Victoria holds her power in England." Queen Victoria holds her power as the heir of the conqueror of England at the battle of Hastings. I can show you how the people of this State hold their power. It will be found they hold their power by the social compact. In the preamble to the Constitution of 1777, I find the following, and I wish gentlemen to note and to see how the fathers held



this doctrine. The gentleman from Rockland [Mr. Conger] said that we came here claiming that our government was descended from the British government. I will show by reading this preamble, that this government was established even during the revolution, in defiance of the British government, and without any connection one with the other.

"Whereas, the present government of this colony, by Congress and committees, was instituted, while the former government under the crown of Great Britain, existed in full force; and was established for the sole purpose of opposing the usurpation of the British Parliament, and was intended to expire on a reconciliation with Great Britain, which it was then apprehended would soon take place, but is now considered remote and uncertain."

It will be seen that this assemblage based their action upon the ground that the government of the State under which they then lived rested in committees and congresses having no authorization except the consent of the people of the country. The gentleman from Albany [Mr. Cassidy] says the organization formed in the Mayflower proposed to govern the Indians. If the gentleman will look at the instrument there formed he will find that the framers of that instrument only propose to govern themselves.

Mr. CASSIDY—It proposed to govern themselves and the country.

Mr. M. I. TOWNSEND—There is not a word in it except the proposition to govern themselves. So that in so far as regards New England and New York, so far as regards our national government, we live under organizations formed expressly under the social compact. One word more in answer to the gentleman from Rockland [Mr. Conger], and I am done. In one part of his argument, in that part where he proposed to exterminate the colored race by the severity of the climate (for he had two parts to it, one in which he proposed to have the colored race increased so fast as to outnumber us, and the second, in which he proposed the extermination of the colored race by climate). Now, in regard to so much as proposed to exterminate the colored race by reason of our climate, I wish to quote this single fact, that in 1790 the whole colored population of the State of New York amounted to 25,978, and that in 1860 it amounted to 49,905, showing an increase almost twice greater than has occurred in the Empire of France, and an increase greater than the average increase of any country in Europe since that time.

Mr. S. TOWNSEND—What was the population in 1865?

Mr. M. I. TOWNSEND—I will answer the gentleman. The population in 1865 is conceded by common consent to have not been properly shown by the census returns. We do not know what it was, because it was improperly taken. Sir, the gentleman from Rockland [Mr. Conger] ought to have remembered that within the last twenty years the increase of the colored population in Virginia and Maryland was so great that it was estimated that those two States sold to the southern States, of their own children, not less than thirty thousand in a single year. This looks very little like extermination, but it looks essentially in

the opposite direction. But the gentleman told us that philosophers had now substantially established the fact that unless emigration was in isothermal lines, the emigrant might expect extermination; and he says that he himself brought that map, which hangs upon our walls with its suggestive lines upon it, all the way from Washington in order to show us that fact. This is not the first time that we have heard of isothermal lines. When it was proposed to extend slavery into Kansas, into a State whose climate is substantially like our own, Robert J. Walker was dispatched all the way from the city of Washington to Kansas to try and convince the people that although they did not want slavery, although they were determined they would not have it, they must have it in consequence of certain mysterious isothermal lines, and yet by and bye Robert J. Walker returned, not on an isothermal, but on a bee line to the city of Washington, and the last we have heard of his isothermal characteristics was in the Supreme Court of the United States with toothless old Judge Sharkey arguing for an injunction against the people of this Union in their attempt to put down the rebellion in the Southern States, and the gentleman from Rockland [Mr. Conger], will have as much trouble in resisting the will of the people of the State of New York as Robert J. Walker had in attempting to force slavery upon Kansas, although he brings to his aid the same isothermal lines. But, says the gentleman, emigration is not successful unless on isothermal lines. Just look at Brazil. Brazil furnishes the only example, almost, of a successful and prosperous people who have emigrated from Europe to this side of the water, if you throw out the emigration of the Anglo-Saxon race, and their friends, the Celts and the Teutons that came along with them. Look at Brazil. Brazil is located down on the line of eighty degrees of heat. The people of Portugal, who settled Brazil, came from above seventy, and nearly up to sixty, and yet is there any complaint but what the people of Brazil are healthy? any complaint but what the people of Brazil are prosperous? But there is another striking example furnished by history. I have found, and perhaps it was a reason why I ceased to insist upon being called a democrat, that democracy, so-called, had to ignore history, had to ignore facts, had to ignore the providence of God. I find, sir, that according to history a people started from Mecca, which is on the isothermal line of eighty, passed up into northern Africa and over into Spain, advanced up to the line of sixty, advanced above sixty up to the middle of France almost up to fifty, and were there met not by an isothermal line, but by Charles Martel, with the powers of France on the battlefield of Poitiers, and were only driven back by superior military force. I have learned from history that that people, who for seven hundred years dwelt in Spain, were not only the most beautiful, physically, but the most intellectual people then in the world; and yet, although they crossed isothermal lines, they were so skilled in architecture and so far ahead of the rest of the world in that department, that even the Christian church has borrowed much of the principles of their finest architecture



from them. This people surpassed all the rest of the world in mathematics. they were the very discoverers of algebra, they were second in literature to no people then in the world, and such was the standing of their institutions of learning that Christain scholars, or those who meant to be scholars from the North of Europe, went to learn in Moorish Spain what they could not be taught in Christendom, notwithstanding the Saracens had crossed over isothermal lines from eighty degrees up to sixty, and even above that line. Sir, isothermal lines are lines of fallacy—lines of nonsense. They are lines of individuals got up for the same philosophical purposes that Agassiz made his great announcement at Charleston; and for the same reason that Dr. Lieber, when he published his philosophy, placed the negro in so low a social and intellectual position as he did. But sir, God placed our common ancestors in a country whose climate was substantially like our own, in Mesopotamia, up between the Tigris and Euphrates, and some have gone to the north and some to the south and although a little acclimation was occasionally necessary, yet no case can be found where a people continued to flourish for two hundred years where the climate and the country prevented their success and their prosperity. But I have another illustration that I think will be very pat to my old whilom Van Buren, free soil friend of 1848, from Rockland [Mr. Conger]. In 1862 certain men from the State of Massachusetts, with Ben Butler at their head, found it desirable to cross the isothermal lines from North to South, to go into a hotter latitude—to the city of New Orleans. There were men in this country who not only told us about isothermal lines, but who rejoiced publicly in the belief that nothing but death and certain destruction awaited these men even if they passed the enemies' batteries and locked themselves in the city of New Orleans. Yet they went there, and instead of being troubled with the isothermal lines they put the common sense of those people who organized the government of Massachusetts under the social compact, the common sense of those travelers and wandering emissaries from Massachusetts, spoken of by the gentleman from Rockland [Mr. Conger]—they put that common sense in practice in the city of New Orleans, and while the men from the icy north-east, who had been accustomed to the north-east wind from the banks of Newfoundland, were in the city of New Orleans, yellow fever never entered it. I should think the gentleman and his friends would begin to feel that nothing was impossible, that even isothermal lines raised no barrier unsurmountable by men of intelligence, who have a belief in God and intend to keep their powder dry.

Mr. BELL—When the gentleman from Albany [Mr. Cassidy] took his seat, I meant to ask him a question, and with his permission I will ask him now. He referred several times in his remarks to the rights of the women of this State. I would ask him respectfully whether he is in favor of engrafting in the present Constitution a provision to allow them to vote.

Mr. CASSIDY—In answer to the gentleman I would say what I stated at the close of my re-

marks, that I would submit to the people of this State the question whether they would extend to the women of the State the right of suffrage. That is all that I propose.

Mr. BELL—I understood him to say he was in favor of it.

Mr. CASSIDY—As a choice between the two, whether we should take an alien race or not, or take that part of our own race who are only separated from us by sexes, I should prefer the latter.

Mr. BELL—Then I understand the gentleman is in favor of incorporating into the Constitution the privilege of allowing them to vote.

Mr. CASSIDY—I am in favor of submitting such a question to the people.

Mr. BELL—I think the gentleman does not fully and directly answer me. My inquiry was to know if he was in favor of allowing the women in this State to vote.

Mr. CASSIDY—When that question comes up, I will meet it at the polls, as I will all other questions, voting on it by ballot.

Mr. BELL—But at the present time the gentleman is disposed to evade the question?

Mr. CASSIDY—At present I propose to answer the question in that way. I think the measure of the acceptability of a particular element to a constituency is the measure of its fitness therefor. If the black race in this country have so won upon the good opinion of the governing race here that they would incorporate them into the constituency itself, I am willing that should be done. I consider that the test for their fitness, and I consider that the proper tribunal to pass upon it. I can see nothing more fit, nothing more proper, than that those who now carry on the business of the State, and who for a century almost have carried it on, should have this question in their own hands substantially, and that if the whole of the colored population are fitted to vote without any further requirements, or any further limitation, that they should so pronounce it; and when they so pronounce it I will accept it, and accept it cheerfully, with all its consequences. I maintain the same ground as to women. If the present existing constituency think the difficulties which apparently stand in the way of women voting are surmountable, then I would say admit them also. It is a question of high expediency; it is a question of great seriousness, and I acknowledge it is a revolution, a great social revolution, and it is to be approached with a great deal of thought, and a great deal of deliberation, and slowly and by degrees, and therefore I would decide it by submission to the people. I hardly believe that the admission of women into the constituency would be carried if submitted now. I do not know but what it might be carried at some future day, and I am willing that the advocates of such a measure should have a chance to make the test of its strength before the people, and to make the approach to its final consummation by an appeal to test.

Mr. BELL—Should the proposition be submitted to the people, how will the gentleman from Albany [Mr. Cassidy] vote on it?

Mr. CASSIDY—When the time comes I shall decide how to vote then, and I shall vote by ballot, as I told the gentleman.

Mr. M. I. TOWNSEND—I wish to ask the gentleman from Albany [Mr. Cassidy], one question, respectfully.

Mr. RATHBUN—I think we have a rule which prevents a gentleman from making more than one speech upon a pending amendment.

Mr. CASSIDY—It will hardly prevent gentlemen from asking questions, and I believe I have the floor.

Mr. RATHBUN—I call the gentleman to order, and I think I have a right to do it under the rule.

The CHAIRMAN—The Chair decides that if the gentleman from Cayuga [Mr. Rathbun] insists upon his point of order, if there are any other gentlemen on the floor who desire to speak, the gentleman from Albany [Mr. Cassidy] and the gentleman from Rensselaer [Mr. M. I. Townsend] must give way.

Mr. KINNEY—I do not suppose this question of negro suffrage is now legitimately before the committee. I do not desire to discuss that question, but as I understand it the question is upon the amendment offered by the gentleman from Richmond [Mr. Curtis], and upon that I desire very briefly to say a few words, namely, upon the right of women to vote. In my anxiety to have the work of this Convention progress and culminate in a perfected Constitution within such reasonable period of time as will not bring odium and contempt upon it and upon its labors, I have foreborne thus far to offer any extended remarks upon any question that has been before it. The question of removing the restrictions that have heretofore been placed on woman, and of allowing her the free exercise of her self-governing powers in common with man, seems to require something more than has yet been offered upon that subject. The world has long been accustomed to regard woman as the mere appendage, instead of the counterpart and co-equal of man. Constitutions and laws have been framed upon the hypothesis that she is inferior in capacity, and designed by the Creator to occupy a subordinate, if not a slavish condition in life. And it was not until the American Revolution developed the idea that all men are created with equal rights that the other idea was suggested that possibly woman might be included in that formula. Hitherto her person and her property had been so completely and absolutely sunk upon entering the marriage relation that the law scarcely knew of the existence of such being. She had few rights which the laws, or the men who made the laws, were bound to respect. But under the civilization of the age, and its wonderful discoveries in all the departments of science and philosophy, she has been discovered and brought to light, since which period she has been gradually emerging and arising to the stand point of perfect equality with her former lord and master. But her natural rights have never been, to any great extent, restored to her without a desperate struggle on the part of those who had usurped them. Some twenty years ago, when it was proposed in this State to recognize her personal existence while a *feme covert*, and also her rights of property, there were not more than a half dozen senators who dared vote to relinquish to her those rights; and

soon after men turned pale everywhere when they saw the scepter of rule over woman and her property departing from them. Now but few can be found in the State who will own that they ever hesitated to grant her those rights, and not more than two or three in this Convention have the ungallantry to cast doubt upon the propriety of those eminently just and humane measures. Now that she asks the right of self-government upon terms of equality with man, so long and so unjustly withheld, gentlemen hold up their hands in utter amazement at the demand. Probably her request will receive in this Convention, about the same support her plea for the right of property did in the Legislature twenty years ago; but I predict that twenty years hence few men will be found to acknowledge they even so much as questioned the propriety of doing this act of simple justice. The gentleman from Rockland [Mr. Conger] protested against any relinquishment of power on the part of those who now enjoy a monopoly of it. He said the sovereign power of the State is vested in the present voting population, and he denounced the proposition for a surrender of any percentage of it to those who do not now enjoy it. This has been the plea of crowned heads and privileged classes in all ages of the world. It is the argument of the aristocracy of England to-day against a surrender of a percentage of their power to the seven or eight millions of disfranchised men in that kingdom. His speech would have been extremely pertinent, though not perhaps proportionately powerful, as a speech in the English parliament against the franchise bill. The money changers of this State gave up the blessed privilege of sending their debtors to jail, only after a long and arduous struggle. The ballot was given the poor man under protests not unlike those heard in this Convention, by the parties who believed the power of the State should be wielded by the property holders of the State. That branch of the democratic party which had ruled this country so long and with such an iron hand, when they saw the scepter of political power departing from them, sought to retain it by thrusting their country into the most terrible civil war the world ever saw, and they gave up the right to enslave their fellow man only at the cannon's mouth. In keeping with this death-like grasp on political power, is the refusal of gentlemen to-day to part with any percentage of it by permitting other classes to exercise those natural rights of self-government on equal terms with themselves. Sir, we are parting with a percentage of our political power every day. Foreigners who land upon our shores are continually demanding political power and it is granted. The young men, as they arrive at the age of manhood, demand a voice in the work of self-government and they have it; but if the argument of the gentlemen from Rockland [Mr. Conger] is worth anything it would shut from out the pale of State sovereignty, the boys that are waiting upon us in this house when they too shall arrive at manhood; for the sovereignty of the State, when it is conferred upon them, will be withdrawn from us to that extent. But, sir, I dissent from the whole theory that society confers rights upon anybody. The

right of self government, upon which our whole superstructure is based, is in the man. It has been written by the finger of God himself upon the mental constitution of every human being, and in such unmistakable characters that it is impossible for us to misunderstand, misinterpret or mistranslate them. We need not go back to Aristotle or other heathen authorities upon this subject. We have but to read man himself and there we find the law strong as Holy Writ. If I were disposed to quote authority, I would give that of the ablest legal commentator that has yet written upon the subject, who says that "political or civil liberty, which is that of a member of society, is no other than natural liberty so far restrained by human laws (and no farther) as is necessary and expedient for the general advantage of the public." In addition to which I would say that, civil or political rights are man's natural rights so far restrained (and no farther) as shall be necessary for the good of the whole. If this be not true then our immortal Declaration of Independence is a myth, and our political fabric built upon the sand, and we had better, therefore, hasten back to the divine right of kings to rule the people instead of depending upon that subterfuge—the divine right of the people to rule themselves. I repeat, sir, the right of self-government exists in the man, and all that society can do in its corporate capacity is to regulate the exercise of that right; or, for certain prudential reasons to restrict it altogether. Society cannot confer the right; but it may regulate it, and for its own safety it may in certain cases refuse its exercise. This right of self-government does not inhere in the child, for the laws of its very being clearly demonstrates that it is dependent for support and government upon the natural parent, and has not yet attained to the condition of self-support, self-dependence and self-government. But when it is developed to that condition, then I insist that all the rights of self-government which pertain to any other member of society attach to him; and if society refuses him the exercise of them, except for certain prudential reasons, then it is an usurper, and violator of God's immutable law. Foreigners may properly be refused the ballot until they shall have become so familiar with our system of free government, and become so purged of their prejudices in favor of their own, that they can vote intelligently and with safety to our form of society. It is refused to idiots, the insane and felons for those prudential reasons which readily suggest themselves to every mind. I now desire to apply these principles to the question before us, the right of women to vote. It is readily seen that the foundation is laid for woman suffrage. Woman is but the counterpart of man—the two constitute the genius of the race. Man possesses no faculty or power of mind whatever which woman does not also possess, and in a mental point of view they are in truth the counterpart of each other. If mind votes and rules and governs, and not wealth or physical structure, then the right of woman to vote, rule and govern is no less than that of man, and therefore the *onus* lies on those who refuse her that right to show the sufficient reason for the refusal.

No one has yet shouldered the inevitable task of showing her destitute of any of the essential elements of government which inhere in man. Any attempt of the kind would be met by the fact so familiar to every mind that she is already intrusted with the most complicated and arduous tasks of government, such as the government of the family and the school; and it is needless for me to say that she performs those difficult governing duties with a degree of success which has never yet characterized the opposite sex. Why should she not vote? Gentlemen say it is not her legitimate sphere. Any sphere is her legitimate sphere which she can fill with credit to herself, and without detriment to society. A few years since owning and managing property was not her sphere; school teaching was not her sphere; the store, and the counting room, and the post-office, and the printing office, and the apothecary shop, and the medical office, and the lecture room, etc. etc., were not her sphere. All these, and many other like situations which have heretofore been filled by men exclusively, she has filled with so much propriety and ability that the question as to her sphere in these directions has become almost obsolete. Other gentlemen fear the disruption of the family. The most intense and violent feuds which have ever disturbed society have grown up from religious and sectarian differences. Would gentlemen, therefore, say that none but the men shall have anything to say or do with matters of religion? One gentleman has held up before our frightened visions the horrible idea of allowing the vile women of our large cities to vote. Would that gentleman point to them as representative women of the State of New York; as a proper index of his wife and my wife; of his daughters and my daughters? What would the gentlemen of this Convention say if I should, as a reason why men should not vote, present before them those vile masculine wretches who pollute certain portions of the city of New York? And how would my democratic friends regard me should I hold up to view the voting population of Mackerelville and Five Points as representative democratic voters of the State? If these women were not introduced as representative characters, then why were they introduced at all? Sir, I believe the women of those localities are better than the men—I never saw a locality in which they were not better than the men. And notwithstanding all the efforts of the gentleman to disparage them as a voting element of society, by showing that they had become so demoralized as to be nearly one-fourth as bad as the men, I find by the prison statistics before me that the native-born women are but one-twentieth as bad as the men; that is, there were twenty men in the prisons of the State in 1866 to one woman, and of foreign birth there were ten men to one woman. In examining the pauper statistics I find the male paupers largely in excess of the females. With such ratio of criminality and pauperism in favor of the woman, I think we need not fear that our elections will be brought into disgrace by allowing this better element of society to vote. Those who have attended political meetings where the women were present know that



they are conducted with decency and propriety, and are free from the obscenity, profanity and drunkenness which too frequently characterize those composed exclusively of men. Their presence at the polls would have the same humanizing and refining effect. Our elections would be held in more comfortable and respectable places, and much of the vulgarity, rowdyism and blasphemy which now pollute their atmosphere would be banished. Instead of dragging woman down it would bring the men up to a better political standard. Those who visited California in the early history of that State can call to mind the condition of a purely masculine society. Violence, terror and crime ruled with a high hand, but woman has civilized that beautiful land and made it, socially, a civilized State. Those who complain so bitterly and no doubt reasonably of the corrupt condition of our politics, should not be at loss for one of the best remedies which the elements of society afford; it is woman voting. A State under purely masculine rule must be characterized by those cold, stern, severe elements of government which characterize masculine society. The State and all her institutions necessarily partake of the nature of her voting population, and we never can infuse into it those purer, warmer, more generous and more humane elements until those elements of society are felt at the ballot box. This State will never become our idea of a perfect State until it is made to impersonate all the elements of a perfect society and a perfect humanity.

Mr. BECKWITH—Mr. Chairman, I did not intend to address to this Convention any remarks on this subject, nor do I now rise for the mere purpose of inflicting a speech upon the committee. I do, however, desire to submit a few remarks for its consideration. When this debate opened on the report of the committee, my mind was not settled as to any rule that should govern in determining who should be or were, on principle, entitled to the elective franchise. While listening to the debate I have endeavored to discover some rule, to be founded on principle and of general application, that would solve all the difficulties that surround the subject. Some such rule, that would place the right to the elective franchise on a solid basis, resting on those principles of justice, truth and right, that would bear the severest scrutiny and criticism. I am opposed to arbitrary rules to define and govern so great a right as that of the elective franchise. The people of this State are a thinking people, and they will never be satisfied with arbitrary rules in a matter of so great importance. But give them a rule founded on the true principles of right, and they will be satisfied and adopt it. The subject, who is entitled to that right, seems to be occupying the public mind in this State and nation, and seems to be struggling for the development of some such rule as will determine and settle on sound principles, to whom the right should be given as a matter of right—a rule that shall rest on a firm basis. It may, it seems to me, be justly termed a great thought agitating and struggling in the public mind to assume form and develop itself into the embodiment of some rule that shall securely establish the right to all who should of right

enjoy it. Such has been the case in all ages of the world, in relation to great ideas. All who are familiar with history, know that great thoughts have struggled often for ages in the human mind for the full and clear development and expression of great principles of morals and especially of government, and they have gradually assumed form and in the process of time received a name or such a brief expression of them so clearly defining them, that they have become common truths, and the common property of mankind, and great land-marks for the guidance of all. Such was the case in respect to the great principles enunciated in the immortal Declaration of Independence; and yet some of those truths are still struggling for a more distinct and definite form of expression. Such, it seems to me, is the glorious idea suggested by the expression, that all governments derive their just powers from the consent of the governed. That great thought is now struggling in the public mind, not only of this State but of this nation, for a more definite form of expression, so that the exact truth shall be exhibited to the mind of all. This, some say, is manhood suffrage—others that it is manhood and womanhood suffrage. I think the time is not far distant before some rule for the guidance of all will find an expression, founded on the principles of eternal justice, truth and right, in such form as to make it clear to all minds, and make it the common property of all men, like that other great truth of the Declaration of Independence, "that all men are created free and equal, and are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." Who doubts that this expression of the great principles of human rights has not so deeply burned itself, if I may be allowed to use the expression, into the hearts, thoughts and conscience of this nation, as to have been the principal cause that has led to the abolition of slavery in this nation and to the aspirations of people in many other lands for freedom. I have been an attentive listener to the debates on this floor, to see if I could discover the true rule, to be founded on principle and of general application, which should be adopted in regard to the elective franchise, so clear and distinct as to carry with it, in its form and expression, a conviction of its truth, and so far I have not heard any gentleman lay down, or attempt to lay down any definite rule, except the gentleman from Oneida [Mr. T. W. Dwight], and I am very much obliged to him for what he has said on that subject. It does not satisfy my mind to say that manhood suffrage, or manhood and womanhood suffrage should be the rule. They are too uncertain to be the expression of principle. They do not define the matter so as to be a clear and distinct rule of action, and they do not suggest to my mind any definite rule. I wish to avoid all arbitrary rules. The gentleman from Schenectady [Mr. Paigo] stated to us very clearly the legal rights of the different members of society—such as their civil and political rights—and in respect to his statements of them till he came to the one called the elective franchise, I discovered no ground of dissent, nor do I dissent from his definition of



that franchise—nor do I intend to express any dissent to his statement, if I understand him correctly, that the governmental power of this State is, in fact, vested in those, and those only, who under the Constitution and laws of this State are authorized to exercise the elective franchise. But when he says that they, and they only, possess *the right*, if he means anything more than the legal right, then I am forced to dissent. It is only the old exploded doctrine that might gives right. If he had said they, and they only, possess the power, then he would have spoken correctly. Nor do I agree with him that they only, who under the Constitution and laws of this State are authorized to vote, are the only persons who are entitled as a matter of right to the privilege of voting, and that all other persons are only entitled to that privilege as a right, when the authorized voters shall grant it to them. I do not believe the extension of the elective franchise to persons not now authorized by the laws of this State to vote, is a mere matter of favor or grace, on the contrary I insist that if they are qualified by their intelligence, virtue and love of country, and the exercise of that right by them in no way impairs or impedes the rightful progress of society, and the just and more full development of its moral, intellectual and material improvement, they have, as members of society, the right to insist upon the elective franchise—not simply the right to ask it as a matter of favor or of grace, from those who enjoy the privilege, but as an inalienable right, if you please. For I believe the Supreme author of all things, created man, that is, all men, social beings, and endowed them with a mental constitution or powers of mind that may be greatly developed, and which fit them for society, and which find their greatest and best enlargement and their highest good in society, in meeting all the relations that grow out of organized society, and in discharging the duties that spring from those relations. The Sovereign of the universe has so constituted man that he cannot, or at least will not, rise to that high elevation which his maker intended, outside of society. Hence I insist that every human being who shall possess the before mentioned qualifications, and none of the disqualifications which I have barely hinted at, has the right to demand as a right, and not as a favor or matter of grace, the elective franchise, with perhaps one solitary exception, and that exception is limited in its operation. I refer to minors. There need be and should be in my judgement no arbitrary rules not founded on principle, to exclude any person, not otherwise qualified, from voting. Infants are excluded on the principle of incompetency for their own good and the good of society, and the rule excluding them is not arbitrary. There is nothing in it of that character except fixing the time of exercising it at twenty-one years of age. The proper government of society requires fixed and certain rules, and the one that fixes the time when minors shall arrive at twenty-one has been ascertained by experience to be the best. It fixes it at that age for his good and the good of society, and protects him from all his improvident agreements made while under that age. The only doubt that has arisen in my mind grows out of the fact that he is compelled at the age

of eighteen to take up arms in defense of his country in case she needs his aid at that age. It may be said that many young men at eighteen are better qualified in every respect to exercise the right than many voters. True, but the good of society requires certain and fixed rules, so that the one mentioned is not entirely an arbitrary rule. I am constrained to dissent from the position taken by the very learned and able gentleman from Schenectady [Mr. Paige], that the elective franchise of right belongs to those only who now enjoy it under the Constitution and laws of the State, and that its extension to others is matter of favor or grace and not one of right. If the principle which he stated, that the legal voters of a country alone have the right to extend or withhold, as a matter of right, the elective franchise from any class of society possessing in other respects the proper qualifications, should prevail, then, as they have the power, they can gradually lessen the classes who vote, and thus in the end establish, instead of a democracy, an aristocracy, or even a monarchy—and his position, it seems to me, would be the strongest safeguard of a monarchy or of an absolute sovereign. An absolute monarch can say to his subjects, the right of suffrage is not vested in any of my subjects, it can rightfully be exercised by none of them unless I grant it as a favor; if I grant it as a favor to some few of my most wealthy and intelligent subjects, it is a matter of grace. Such it seems to me to be the tendency of his argument upon this point, and such is the rule, I think, that now prevails in many governments in Europe. It is contrary, it seems to me, to sound principle and at war with the spirit of our institutions. For one I believe the right of suffrage does not come merely as a favor from the governing power, the present legal voters. The right springs from his constitution as a man designed by his maker for society and so constituted by his creator that in it he can adorn and develop his intellectual and moral powers, and in it, and not out of it, find his highest good, improvement and happiness. Now, sir, what I have desired is, that we might by a full discussion of this subject bring out some rule or proposition that should place the right on principle and be so clear as to carry home conviction to the minds of all. I shall not attempt to lay down any rule. The propositions of the gentleman from Oneida [Mr. T. W. Dwight] strike my mind with force, and I have tried to discover, whether there is anything wrong in them as explained by him, or whether they were defective, or whether from the suggestions which they raise, a brief and better rule might not be established. He says, in substance, there are two classes that should be excluded from suffrage: "The first class is those who have personal incapacities, and the second class those who, having no personal incapacities, would, by their action in a particular case, tend to arrest the progress of the government, or perhaps to subvert it." Now that gentleman has shown to my satisfaction that the colored race cannot be justly denied the right of suffrage on the ground of incapacity. But he has not attempted to show that the exercise of the franchise by that race may not in some way retard or injure society in some of its departments

or interests. But this has been done by other gentlemen on this floor, and I will not go over the different arguments. They are satisfactory to my mind, and establish satisfactorily to my mind that none of the interests of society would be injured or impaired by granting that privilege to the colored man. The only plausible injury suggested by the opponents to such grant is that it may injure the social relations of society. To that I answer: 1st. That you cannot by law regulate the social relations of society. 2d. The danger of increasing the commingling of the blood of the two races. Sir, do you or I, or any reflecting man believe that if the colored race had not been subjected to that abominable and wicked rule, enunciated by the late Chief Justice of the United States Court, that a colored man has no rights which a white man is bound to respect, one-tenth part of that great and truly alarming evil would have existed. Why, sir, that rule was lived up to at the South. The colored woman had no right to protect or be the keeper of her own chastity, nor could her father or husband or brother, even attempt to protect her against the demands of any brute in the form of a white man, only on peril of his life. Sir, if the civil and political rights had been enjoyed by the colored people of the South, nine-tenths of that evil, in my opinion, would not have happened. It is necessary, to protect the community from that evil, that political rights should be added to the civil rights of the colored people, and then, in my opinion, the community is better protected from that great evil. But I have said enough on that subject. It may be asked, how can you deny the elective franchise to women. To answer that, I will briefly say that, if you grant to women the same right to vote that men enjoy, I am apprehensive that you will, to be consistent, have to give to them the right to hold offices, and I am, at least, apprehensive that it will weaken the true foundations of society. The Good Book says, "evil communications corrupt good manners." Woman's perceptions of right and wrong are far more clear than man's; she is sensible to the approach of vice, and that is her great safeguard. But open, visible and sensible familiarity with vice will corrupt. It first blunts that nice perception and destroys that delicate sensibility. If destroyed or weakened in woman, as they are in men, one of the safeguards of society and of woman is equally impaired. It is a prayer which we all need to make, "Lead us not into temptation." Now, is there not danger in thus throwing open to woman the privilege of voting, of holding offices, and entering into the presence of all the busy scenes of vice and immorality, that voters and office-holders of necessity have to witness, that woman will be lowered from what now constitutes her glory and her power, to the level of man; and by thus impairing her moral power, you weaken the foundations of good society and good government. She now occupies a higher position than man. On the women of the land depends much and the best of the interests of this country. I have listened with great interest and attention to the able, eloquent and thrilling argument of the gentleman from Richmond [Mr. Cur-

tis], but my judgment has not been convinced that evil and even danger would not result from extending the elective franchise to woman—that you would not be doing her as well as society a wrong.

Mr. SMITH—I shall feel compelled to vote against the extension of suffrage to women, and as I have among my immediate constituents persons whom I highly esteem, and for whose judgment I have great respect, it seems to be but just to them, as well as to myself, that I should accompany that vote with the reasons which induce me to give it. I will not undertake in the limited time allowed us here, to discuss elaborately the question, but only state in outline some of the reasons and arguments that induce me to vote against it. We are met, *in limine*, in this discussion with the question: Is the elective franchise a natural right? Because, if it be a natural right, I do not understand how we can deny it to women, to minors, or to foreigners; and if I believed it to be a natural right, I should at once, in order to be consistent with myself and with principle, vote for its extension to women. But as I understand it, and as I think it has been shown by various gentlemen who have addressed the committee, it is not a natural right. What is a natural right? It is a right that is inherent in humanity; a right given by God; a right that pertains to humanity under all circumstances, to the old and to the young, the black and the white, to minors as well as adults, and to women as well as men. As I suggested the other day, under the Patriarchal government which existed for sixteen or seventeen centuries, and under the Theocracy where God himself was the civil ruler, this right was not given to woman. Why not, if it be a natural right, a right bestowed by the Creator? Is it to be supposed that during the Theocracy God denied to his creatures the exercise of those rights which He had given, and which they had not forfeited? No respectable writer upon the science of civil government can be found who holds that this is a natural right. Even John Stuart Mill, whose argument upon this subject has been laid on our tables, does not pretend that it is a natural right, or an absolute right, but distinctly affirms the contrary, and puts his argument on the ground of expediency. Civil government, as I understand it, is simply the instrument or power by which society governs and regulates the conduct of its members. The right to take part in government is, according to the most approved authorities, a political right. In the very able argument presented by the gentleman from Schenectady [Mr. Paige], he regards it not as a political right, but as a franchise, or privilege. It is not, in my judgment, a matter of much importance, whether it be classed as a right or a privilege; but I find some of the most approved writers upon the science of government who denominate it a political right. They mean a right, or privilege if you please, which society, in the formation of its organic law, leaves with, or grants to, certain portions of its citizens. There is a certain end which society has to secure, to wit: the highest good of the individual as a member of society, and in doing that it may adopt such rules as are necessary and proper. The gentleman from Schenectady [Mr. Paige] passed

some criticisms upon the unstudied remarks which I had the honor to submit a few days ago. He said that if I derived the right of the colored man to participate in the administration of government from the statement in the Declaration of Independence that "all men are created free and equal" I must apply it equally to the women, because women are included in the generic term, "all men." I concede that women are included in that generic term, but cannot admit the gentleman's inference. This enunciation in our Declaration, implies the same natural rights, and equality before the law. It requires that no unjust or invidious distinction be made in government. It demands the same right and privileges for the colored man that belong to the white man, other things being equal. But, sir, it does not ignore natural distinctions, nor does it involve, necessarily, an identity of sphere or sameness of functions. There may be, and there are reasons why man should participate in government, and woman should not, which do not imply inequality in the sense of the Declaration of Independence. We demand suffrage for colored men because they are *men*, and exclude women because they are *women*, and this is not incompatible with equality before the law as enunciated in the Declaration of Independence. Now, if this be a correct position, then it follows that society may exclude persons and classes from participation in the administration of government for good cause, and the question arises, what is good cause? What rule shall we lay down to guide us on this subject? It is difficult, sometimes, to ascertain the correct rule of action in this matter. The best analysis of this question that I have found, is contained in the chapter upon civil government in the Moral Science of President Hopkins, one of the ablest minds in the nation. He lays down, in substance, these rules: First, we may exclude classes and persons from participation in the administration of government, who are hostile to the welfare of society. This would exclude criminals, factions, and races known to be hostile to society.

Mr. RATHBUN—And rebels.

Mr. SMITH—And rebels, as the gentleman suggests. I will accept the amendment.

Mr. SMITH—The second ground of exclusion is incompetency to understand and promote the ends of society. Under this rule we exclude minors and foreigners. It is true that there are some minors at the age of eighteen, and perhaps younger, who understand as much of our government as many who have the privilege of voting. But where the right is not absolute, society must fix the best average limit it can. Like all general rules, it is possible that this may, in some cases, operate arbitrarily and unjustly. The third rule laid down is this: Where there are such relations established by God that one portion of the community cannot take part in the administration of government without injury to the ends of society, then that portion may be excluded. It is under this rule that we exclude women. And, it will be perceived, that it is not upon the ground of hostility to government, nor upon the ground of incompetency to understand the interests of society that she is excluded. It is not upon the ground

of inferiority, or inequality before the law, but upon the ground that God, in the creation of man, has made certain fundamental distinctions, whereby if one portion of the community is permitted to participate in government, it would not tend to promote the best interests of society, but on the contrary, would necessarily tend to its injury. Sir, that it is proper to exclude women under this rule, appears to me obvious from several considerations. First, it appears from a universal sentiment of humanity. It is universally felt to be improper for women to participate in government. It may be said that this is a mere prejudice, which has come down to us from former generations; but it seems to me, sir, that the sentiment is so general, so common to all ages and all countries, that we must conclude that it is implanted by God; and it is never safe to violate a true instinct of humanity. It appears, secondly, from the constitution of woman, physically, mentally and morally—

Mr. KINNEY—May I be permitted to ask a question? I would like to inquire if there is not a more distinctive and clearly marked prejudice in the public mind against allowing negroes to take part in the government than there is against women?

Mr. SMITH—Not at all. You go to England and the prejudice which exists against color in this country is not found there; it is confined to our country entirely, and grows out of the degradation of that class caused by the wrongs to which it has been subjected here. It is a wicked, unworthy and mean prejudice, which does not prevail in England. Fred. Douglass, whom you would exclude from voting in this State, if in England, would be treated with as much respect as any gentleman who might visit that country.

Mr. KINNEY—I ask if it is not also a contemptible and mean prejudice which we have against women's voting, and equally to be condemned?

Mr. SMITH—I will answer that. I claim that I have as high a respect for woman as any man, and think I have given some evidence of it in my time. It is because I respect her character, because I would keep her where she is in her sphere of power and influence, that I do not wish to give her the privilege of voting, and thus drag her down from her high position. I was about to say, when interrupted, or had said, that another reason for excluding woman is on account of the difference, physical, mental and moral, between man and woman, indicating clearly that they were designed for different spheres. My third reason is found in Revelation, which teaches the headship of man, both in relation to woman and to the family. I know that some of these modern women's-rights men, as they are called, and women's-rights women, have but very little respect, apparently, for the Bible. They talk about it flippantly, and cast aside, as matters of very little consequence, the rules and principles which are clearly enunciated in the sacred oracles. But I trust it will be a long time before we shall cease to regard that book as the foundation of our free government, and the only safe rule of our faith and practice. If man is the divinely appointed head in the family, which is woman's special sphere, why not in the State, for whose broad:



and rugged duties woman is unfitted? Here, as always, nature and Revelation agree. While woman is physiologically and psychologically unfitted for these duties, she is adapted to the sphere for which God designed her, and which, though different, is not inferior to that of man. It is never wise or safe to disturb the divinely arranged machinery of society. The Bible also clearly indicates the unity of the family; and I believe in the doctrine of the gentleman, who addressed the committee the other night, from Rockland [Mr. Conger], that in society and in the administration of its affairs, the family is a unit, the father and husband being the head and representative. I believe that to be the doctrine of the Bible, the doctrine of common sense, and the only safe rule of action. Again, I infer the propriety of her exclusion, from the consequences that would result from disturbing the divine arrangement. In my judgment, notwithstanding all that has been said to the contrary, the result would be the destruction of the family! The family — the nursery of civilization, of patriotism and of piety; that little sanctuary of domestic bliss where the mother is the presiding angel; the thought of which sweetens the toil of the laborer, sustains the business man in his round of toil, enables the statesman to bear the load of cares that press upon him, comforts the heart of the sailor upon the ocean wave, cheers the soldier on the tented field, and nerves his arm to deeds of valor in the deadly strife. Who can estimate the power of a mother's love as it operates on the man in after life, when he goes out among the temptations, the strifes and cares of the world? That mother's love—its memory echoes through all the chambers of the soul like angel voices; its divine influence is an enduring talisman; its sweet fragrance is a holy charm. We have experienced it, we know it, and feel it—

"My mother's voice, how oft doth creep  
Its cadence o'er my lonely hours,  
Like healing scent on wings of sleep,  
Or dew to the unconscious flowers.  
I can't forget her melting prayer,  
E'en when my pulses madly fly,  
As in the still unbroken air,  
Her gentle tones come stealing by;  
And years, and sin, and manhood flee,  
And leave me at my mother's knee."

Not the brawling, brazen politician, but the gentle, loving, tender, faithful mother, who watched over our childhood in the sanctuary of home. Change her, transfer her to another sphere, and you have no such mother, you have robbed her of her influence, bereft her of her power, and blotted out that home forever! It is said by gentlemen that merely allowing women to vote would not produce such a result, but the advocates of this measure claim that they shall have not only the right to vote, but the right to hold office; that they shall be equal with men and participate in all the affairs of government; that they shall enter the learned professions, go to the field of battle, sit upon juries, and in short, that they shall enjoy all the privileges, and perform all the functions of men in the administration of government. George Washington, and many of the best men that the world has ever seen, have attributed their success in life to the influence of home and

a mother's tender care; and if that home were destroyed what could compensate for the loss? There is another matter bearing upon this question, to which I will simply allude in this connection. There is a great and growing evil in American society which has awakened the serious consideration of many amongst us, and attracted the attention of distinguished foreigners who have visited our country. I allude to the growing disinclination on the part of married women to the holy office of maternity. It is true, our population is increasing, but the increase is mainly through the influx of foreigners. If women were permitted to participate in government, and should devote themselves to the duties and functions hitherto exercised by men, it would inevitably result in an aggravation of this serious evil. I insist, sir, that it does not follow because woman's sphere is different from man's, that therefore it is lower. It is a false assumption that woman is degraded by an exclusion from the elective franchise. It is not a degradation unless she is entitled to the right, and excluded upon grounds derogatory to her character. You must first show that she is entitled to the right, before you can predicate degradation upon a deprivation of it. I insist upon it, that in her present high sphere, she has a power and influence that she would not and could not have if transferred to another sphere for which she has no adaptation. It is a mistake to suppose that the most noisy and demonstrative agency is the most powerful. The thunderbolt that goes crashing through the sky, followed by deafening peals, is powerful, but no more so than the silent forces of nature that unlock the fetters of winter, liberate the juices of the plants and send them through every vein, vivifying the whole, and causing leaf, and bud, and blossom to come forth, and clothe the earth with beauty, the fields with verdure, and fill the husbandman's barn with plenty. But it is said that woman is taxed and therefore she should have representation, that taxation and representation cannot be rightfully dis severed. This position is specious, but not sound. To every general rule adopted by society for its government, there will always be some exceptions, and the few widows and unmarried ladies who are taxed are exceptional cases. If the rule admits of no limitations or exceptions, then we must apply it to foreigners and minors. Their property is taxed, and they have no direct representation, but they have the protection of government for which their tax may be regarded as an equivalent. But, sir, if the rule is inflexible, admitting of no departure from it, then I would say give up the taxation. If it is not right to tax women when they have not the privilege of voting, then refrain from taxing them. Better by far lose the little revenue derived from that source, than to turn society into chaos. I object also to this measure, and the mode in which its claims are urged, because it assumes that there is an antagonism between the sexes. Mrs. Stanton, who addressed the Convention the other evening, said that if women had had the exclusive right of legislation as long as men, they would have legislated man into a nut shell before this time. Antagonism



between the sexes? What! Man opposed to the right of woman! Who are the women? They are, sir, our mothers, our sisters, our wives and our daughters. The idea is preposterous that there is any antagonism between their interests and ours, or that we could wish to deny them any rights to which they are entitled. This is a mischievous assumption, because it tends to produce the very state of affairs which is falsely assumed to exist, and greatly to be deprecated. Again, sir, there seems to be a disposition on the part of the advocates of this measure, and also of those who are opposed to colored suffrage, to link the two things together. This I hold to be illogical, disingenuous, and injurious to the colored race. It is illogical because the questions have no connection with each other; the distinction depends upon sex and not upon color. We claim the right of suffrage for colored men because they are men, the same measure of political rights for black as for white, under the principles of our government and the Declaration of Independence; but we object to women, both white and black, participating in government because they are women. The assumption is disingenuous on the part of its advocates, because they consciously place the claim on a false basis, and selfishly make use of the prejudices against color to advance their own interests; and besides, it invites partisanship into this field from which it should be entirely excluded. It is unjust to the colored race because it embarrasses the question of their enfranchisement with another foreign to it, and prejudicial to its success. It is said that there are many evils existing in society that would be corrected by giving woman the ballot. It is claimed that woman at present does not enjoy the rights and privileges to which she is entitled—that she has not the same privileges in schools, that she does not receive proper compensation for her labor, and that in many other respects she is subject to disabilities and invidious distinctions. Now, sir, it may be true that all these evils exist, but it is simply a bald assumption that the ballot in the hands of woman would cure them. It is a convenient mode of argument, to state the evils, and then quietly assume that female suffrage is a remedy, but not very satisfactory or conclusive. I take issue upon this assumption, and deny that the proposed remedy would cure, or even mitigate the evils complained of. On the contrary, it would rather aggravate them, and introduce others of a more serious character. The change would tend to degrade woman rather than to elevate her. Now, the fact that we have given woman the right to hold property, that we have changed our laws for her benefit; that she has had everything which she has demanded, shows conclusively that there is no desire on the part of man to deprive woman of her rights. Said an intelligent lady of this city not long since, "I do not wish to possess this privilege; because, if it is given to women I shall be compelled to go to the polls to vote, in order to protect myself and society from the influence and vote of that abandoned class of women who infest our cities."

Mr. M. H. LAWRENCE—I would like to ask

the gentleman if he does not think the ballot would equalize the rates of wages between males and females; if conferring the ballot upon females would not tend to equalize the wages of the two classes.

Mr. SMITH—Mr. Chairman, I do not see how; if there is an inequality, go to the Legislature; show that inequality, and if it is in the power of the Legislature they will grant relief. They never have refused relief when it was demanded.

Mr. M. H. LAWRENCE—I ask do they have the same amount for their labor as males.

Mr. SMITH—Whether they do, sir, or do not, I cannot see how it affects this question; but it is suggested by some gentlemen around me, and it may be true, that they get as much for their services in proportion to the value as men. I do not pretend to say how that may be, but I do say that if there is any injustice in this respect, that it may be remedied under the present order of things. There will be no disposition on the part of the husbands, and brothers, and sons, to deny to the women their rights in this regard.

Mr. BICKFORD—Does the gentleman deem it right to remedy by act of the Legislature the wages for labor? He would seem to be understood as saying that he deems it right for the Legislature to pass an act fixing the wages of labor. It cannot be regulated in any such way, it seems to me.

Mr. SMITH—Mr. Chairman, I made that suggestion in answer to the argument which is made by the friends of this measure. They complain that there is an inequality in wages, and say the ballot in the hands of woman would afford a remedy. Now I say, if the ballot is a remedy, it must operate through legislation. It was upon that assumption I made the suggestion to which the gentleman takes exception. I do not undertake to say whether or not the Legislature has power to regulate wages. If they have not, in what way are you going to remedy that difficulty by the use of the ballot?

Mr. BICKFORD—The only way is for women to take hold and do a man's work.

The CHAIRMAN—The gentleman is out of order.

Mr. MILLER—I do not wish to raise the point of order here, but I think we are acting upon a resolution that limits the speeches to twenty minutes.

The CHAIRMAN—The Chair is of the opinion that no such resolution has passed.

SEVERAL MEMBERS—Yes, there has.

The CHAIRMAN—Does the gentleman from Delaware [Mr. Miller], raise the point of order?

Mr. MILLER—I do not, against the gentleman now speaking, but I object to his being interrupted, and thus prolonging his speech.

Mr. SMITH—I am about through, but I gave time to allow questions to be asked, and suppose that is not to be taken out of my time. I was about to say, that these degraded women of New York, and other cities, would invariably go to the polls, every one of them; and could the refined and virtuous women of our cities be induced to mingle with them? If not, then the vicious and degraded element would be introduced into our politics, with no counteracting

influence to control it. Now, sir, I deny that woman is not represented, and insist that she has more influence now upon the formation of our laws, than she would have if permitted a vote. It is a mistake to suppose that voting, or rather participating in government, consists merely in taking a piece of paper in your fingers and dropping it into the ballot-box. The person who influences the vote, who gives tone and character to society, does more toward controlling our elections, and fixing the character of our laws, than does the person who simply drops his ballot into the ballot-box.

Mr. FOLGER—Does the gentleman contend that clergymen and teachers, who are also engaged in influencing minds and fixing the character of our laws, should for that reason not have a vote?

Mr. SMITH—Certainly they form character, but their right to vote rests on another ground. The reason I would not deny clergymen and teachers that right, is because they are men. The other distinction does not come in there.

Mr. FOLGER—You have put it on the distinction that women were forming character.

Mr. SMITH—The gentleman misunderstood me.

Mr. WALES—Does the gentleman propose to go back—

The CHAIRMAN—The gentleman from Sullivan [Mr. Wales] is out of order.

Mr. SMITH—The gentleman from Ontario [Mr. Folger], misunderstood me. I was answering the argument that they are not represented. Women claim that they are excluded from all participation in the government. I answer that they do, by the influence they exercise upon the voter, upon the youth committed to their care, their influence upon their brothers, fathers, husbands, and generally, by the influence they exercise upon society, exert a greater influence than they would if dragged down to the lower sphere of direct participation in politics, and permitted to drop their ballot into the box. The gentleman [Mr. Folger] suggests that we might upon the same principle deny the franchise to clergyman and teachers. I say not, because they belong to the other class, they are men.

Mr. FOLGER—Does it not all come back to the distinction that one is a man and the other is a woman? Is not that the sole distinction you make?

Mr. SMITH—That is the distinction; and it is a distinction that is very difficult to get over. [Laughter.]

Mr. FOLGER—It is not a distinction that I wish to get over. [Laughter.]

Mr. SMITH—Until the gentleman can obliterate that distinction, and reverse the laws which God has made and impressed upon humanity, he never can get over that distinction. Women are adapted to one sphere and man to another.

Mr. KINNEY—May I ask if the distinction between the sexes creates any difference in their natural rights?

Mr. SMITH—Not in natural rights.

Mr. KINNEY—I ask if the right of self-government is not a natural right?

Mr. SMITH—I will answer the gentleman by saying that the right of voting is not a natural

right. If it were, I would be in favor of giving it to women. I understand it to be a political right. You must draw a line somewhere. Would the gentleman allow every one to vote? I have attempted to show, briefly, where the line should be drawn. As I said in the outset, I did not intend to make an elaborate argument, but simply to present a few points. If there were time, I should be glad to elaborate them, and perhaps I might be able to elucidate the matter more clearly than I have been able to do in this hurried and desultory discussion. With these remarks I yield the floor.

Mr. HAND—I expect to vote against the pending amendment. As the gentleman from Fulton [Mr. Smith] has said, I desire within my twenty minutes to give some of my reasons. But first, my reason is not because woman has not the natural capacity to judge of the fitness of the form of government under which she lives, and to which she is subjected; my objection is not that she has not all the natural rights that man has—the right of protection—that she has not every interest in society that man has. I do not regard her as an inferior. The question has very often come up in society, and has been discussed very learnedly among men, as to whether she is inferior to man. I think she is; and I think also that man is inferior to woman. Each sex has the qualities pertaining to that sex, and in the qualities pertaining to woman, she is vastly the superior of man, while in those qualities pertaining to man, he is vastly her superior. Nature in creation, among the lower animals as well as with man has pointed out the governing power in man; and no created female except woman has ever attempted to assume that power. The male sex exercises that power throughout creation. What is the ballot? There is a great deal of sophistry connected with that question. It is asked “will the mother neglect the solemn duties belonging to her just by going to the poll and dropping in the ballot?” Now any gentleman of sense who uses that argument knows it is sophistry.

Mr. FOLGER—I would call the attention of the gentleman [Mr. Hand], to the queen bee as forming an exception to the rule he states, and ask him if he supposes that the male bee rules the hive?

Mr. HAND—I do not know any thing about that—it is down so low in the scale of creation. I have never looked into their polity and cannot say what office the queen bee has. It is a matter of conjecture. But where the animals are large enough for us to watch them and understand their relations, there is no doubt. Even in the case of the domestic fowl, where there is, perhaps, twenty or thirty of one sex to one of the other, the females flee to the male for protection when danger comes around, and they then when under his protection never talk about being oppressed or assuming the rights that belong to the male. If the simple dropping of a ballot were all that is claimed for woman, that would be a very simple thing. A woman could perform that duty without neglecting her domestic duties, and without neglecting her children or husband. But when we object to her assuming political power because it is incompatible with domestic duties, we

are met with a sneer, never with an argument. They say "does not a mother's love force her to care for those to whom she is bound by such ties?" Do you suppose she has, by simply becoming a voter, lost her womanhood? Has she ceased to be a mother? Now this is all sophistical. Merely dropping the piece of paper in the box is not all that is implied in voting; that is simply the expression of power, but the ultimatum of power is the sword—it is the shedding of blood, and therefore I very properly asked the question in my seat, as an outsider was discussing this question, whether women would assume that duty, whether she would submit to the draft, whether she would go to the tented field and risk her life in the time of her country's peril. The speaker saw the logic of the suggestion, and said she would.

"There is a power comes down as still  
As snow flakes fall upon the sod.  
Yet executes a freeman's will  
As lightning does the will of God;  
And from its power no bars nor locks  
Can shield us—'Tis the ballot-box."

There is a mighty power in the ballot, and the ultimatum of that power is in the sword, and all the intermediate steps are so many steps to power. The woman, in dropping the ballot, assumes to exercise all the conditions belonging to government, to fill all the places of power. She has no right to drop that ballot, which is the expression of the freeman's power, and gives her the right to vote except on the ground that these other relations belong to her, that she has the right to sit on the judgment-seat and on juries, and the right to assume all the responsibilities and action belonging to men.

Mr. KINNEY — I would like to ask the gentleman a question. If he thinks the performance of military duties should necessarily go with the right to vote?

Mr. HAND — Yes.

Mr. KINNEY — Then why do you compel persons under the age of twenty-one to go to the tented field, and do not give them the right to vote; and yet you allow gentlemen to vote who are over forty-five years of age, but do not compel them to go to the field.

Mr. HAND — We have to fix the time of holding political office and exercising political rights, by some authority, and at some period of time, and we simply sometimes begin a little sooner by putting responsibility upon the young men, and this, like all other arrangements of government, depends upon the great interests of society. But some gentlemen want to know if there is not a foolish prejudice against women? A prejudice against women! Only think of it, when you can hardly keep the two sexes apart after they get to be fifteen years old. Talk about a prejudice against women! That is most delightful! I would like to find the man who ever felt prejudice against women, or who was ever actuated by it for one single hour of his life. But the reason why the negro is denied the right of suffrage, is because of a foolish and mean prejudice; we say he is as mean and disagreeable and personally disgusting as a skunk and therefore we do not want him in our midst. That is the feeling against him; that is the feeling that

the democrats nurse and cherish for the purpose of excluding him from the franchise. It is nothing but a foolish and personal prejudice. But there is no such reason for the exclusion of women. I wish to exclude woman by law from exercising political power, and from exercising all those duties and responsibilities belonging to the bustle of political life; because I esteem her so highly; because my remembrances of her are so tender; because all my relations with her in life leave in my memory the recollections of her as one who is dear to me; because of the remembrances of my mother, a mother, not as a political power, but a mother who knew her place in the family circle, a mother who trained her children so carefully, who so patiently watched all their earliest expressions of unfolding character, who so carefully prepared the bed every night, warmly protecting us from the inclemency of the season, who saw that we were fitted for the school-house and were found in our places there, and watched us so tenderly—who can forget such a mother; not sitting in the judicial seat, not in the army fighting, with the arms of men; a mother not coarsely exercising those duties that belong only to man, in his coarse nature and organization, attending around the polls as an electioneerer and canvasser for votes. Not it; but a mother in the family circle, in the place where we claim she belongs, where alone she has the power and where she exerts such an influence over every one. Another memory of that mother, although a quarter of a century has hid her from my sight, comes back to me in my dreams, and she presses her hand once more upon my head.

Mr. KINNEY — I would like to ask the gentleman a question: if she would have been any the less a mother to him if she had had the right to vote?

Mr. HAND — Yes, sir.

Mr. KINNEY — Show wherein.

Mr. HAND — I will in due time. I want to be understood, that is not the only thing that is included in this theory of woman's rights. I say it is incompatible with the nature of her sex to perform these duties. I am going to treat this subject thoroughly—it may seem indelicate; it has been dragged in here and I cannot help it. Would it not be delightful suppose that Mrs. Such-a-one was a judge, and the time has come for the court to open; the witnesses are all present, the crier is anxiously waiting to give the proper and usual notice, lawyers are assembled from far and near with their cases, from perhaps twenty, fifty or an hundred miles around, but no judge appears. What is the matter? Mrs. Judge is not quite well, and the doctor says she must be kept very quiet for the next three months! [Laughter.] She is a pretty judge! She has assumed to sit upon the bench. She is also to sit upon juries—I suppose between these men—a lady, then a gentleman and then a lady. It is possible they might forget the duties they were called upon to perform, in those essential sympathies that a great many men feel (unless they are prejudiced against women) when they come into too close contiguity. But there they sit

trying a case. In the midst of a case that has been going on perhaps a week or ten days consecutively—suddenly one of the jurors is absent; Mrs. Such-a-one is not there. Certain causes which occur to her sex occasionally have brought on a fit of hysteria, and she is not able to leave her bed. I do not wish to pursue this subject further, but I will leave your imaginations to follow it out through all the cases that may occur. I claim that these duties and responsibilities that belong to political government, are fit for and belong to man only, and woman's sexual peculiarities unfit her to perform them? I make that point. It is a substantive point, and one which no argument can get over.

Mr. KINNEY—I would like—

Mr. HALE—I rise to a point of order. We have passed a rule to limit gentlemen in debate to twenty minutes, and I protest against this continued interruption; its operation is to entirely defeat the operation of the rule, and the Chair cannot tell when a gentleman has occupied his twenty minutes.

The CHAIRMAN—The point of order is perfectly proper as a matter of taste. The Chair will endeavor to make the time of the interruption by the clock, so the gentleman who has the floor will have his proper time.

Mr. MERRITT—I think it would be well to insist, that when a gentleman permits himself to be interrupted in this way, it should be taken out of his time.

Mr. HAND—I don't wish to be discourteous to gentlemen who wish to propose questions, and if it is not to be counted in my time I am perfectly willing to reply to questions. My principal objection to their assuming this responsibility and going to the ballot-box and giving expression to authority, is, it is the commencement of power, the ultimatum of which is the tented field and the sword. There is where the law and there is where the government claims the fulfillment of the behest; there is where she authoritatively finishes up the work of government.

Mr. KINNEY—Will the gentleman allow me to ask him another question? What becomes of the court in case the judge himself becomes sick?

Mr. HAND—Those cases do not occur with men one time where they do a thousand times with the other sex.

Mr. KINNEY—I have known judges to be sick for months at a time.

Mr. HAND—I never knew such a case as I supposed to occur with a man. [Laughter.] The great interests involved in this case demand, although it may seem indelicate, that I should search this thing thoroughly, and I intend to do it. I respect the ladies very highly. I love them. I love to look upon the sweet face of a virtuous woman. I love to see her standing at her place in the family circle, with a new, clean gingham dress on, baking warm biscuits for tea. [Laughter.] It is the most delightful sight I ever looked upon in my life. [Renewed laughter.] Again, sir, the nature of the marriage relation, and the sacred obligations of that relation, are such, in my opinion, as to preclude women from the right of suffrage. Sir, the laws of that relation are

old as history, although most of the persons who advocate woman suffrage, sneer at the Bible. We had sneers at it here the other night, from the place now occupied by the honorable Chairman. It was said that the rule "obey the King," and "servants obey you masters," was outlawed to-day and outgrown, and in time we should outgrow the law "wives obey your husbands." The law, "obey the King," is just as binding as it ever was. St. Paul elaborates that, and makes it plainer; it varies the terms, whether Kings or governors—it is obedience to the powers that be. "Servants obey your masters," while there were masters, was perfectly legitimate. If slavery existed to-day I would say to a discontented negro, "while you are a slave, and with this condition of bondage upon you, you should yield obedience to your master, it is better for you and for your master." This doctrine of "wives obey your husbands" is not and never will be outlawed. It is according to the institution of marriage as it was first established on the threshold of creation. God found it was not good for man to be alone, and he said I will make a help-meet for him. As long as woman holds that relation as a help-meet for man, all the blessings of married life, to herself, to her husband, and to her children, will flow out from that relation. It is only in a vicious state of society that we have all these evils, or at least nine-tenths of all the evils of which women complain. They come from that state of society which places women above labor, above care, above looking for anything except to be dressed up like a doll for every man to look at, and every woman, too, who may happen to come into her parlor, or associate with her at the fashionable party. It is that vicious state of society which takes away from women who do not act in their legitimate sphere all the blessings of married life.

Mr. MILLER—I must insist, Mr. Chairman, upon the enforcement of the rule, without any disrespect to the gentleman who is speaking.

The CHAIRMAN—The Chair would inform the gentleman from Delaware [Mr. Miller] that, excluding interruptions, the gentleman from Broome [Mr. Hand] has not yet spoken his full time.

Mr. MILLER—I think it is a mistake, that the interruptions are not to be taken out of the gentleman's time—

Mr. HAND—That is delightful for gentlemen to make speeches here and have it taken out of my time—

Mr. BARTO—I move, sir, that the gentleman from Broome [Mr. Hand] be allowed to proceed.

The question was put on the motion of Mr. Barto, and it was declared to be carried.

Mr. HAND—In the beginning God saw it was not good for man to be alone and God said he would make a help-meet for him, and then the Bible goes on to tell how He made her. And Adam when he saw this woman felt very much as I do when I see a beautiful woman. He looked at her and said, "she is bone of my bone and flesh of my flesh." Let us look at the conditions of married life. Whenever these conditions are carried out in their purity, it has resulted only in blessings. The desire of the woman shall be to her husband. That is she shall look up to him as the



great source, of her happiness, and he shall rule over her. There is the condition of marriage, as it was organized as a sacred institution. I know I shall be met with sneers from some gentlemen and some ladies who sneer at the Scriptures, and say it is all old-fogyism. But the marriage relation was instituted in this way, and with these conditions it has come down to us. It was so adopted by our New England fathers; and the object of these conditions is to preserve the purity, honor and independence of the sex, and to work effectively the machinery by which men can be raised and educated for citizenship and fitted for the duties of manhood. Our New England fathers probably lived up to this strict rule of the marriage relation, as it was originally instituted, as closely as any people have ever done in the world. And if a better race has ever come up from any training than has come from those New England fathers, I have yet to read its history. All the elements of character that ennoble our race, all the strength of character, all its purity and every quality that is desirable in man, we find in the descendants of that race, and yet they have sometimes been ridiculed because they so closely followed the letter of the scripture. In the marriage relation they followed it particularly closely. The husband *may* be a tyrant, but, if properly carried out, the institution will be a blessing to the woman. Any institution is subject to abuses whenever you allow one person to rule over another or over humanity. You will readily perceive that every institution must be subject to rules, and there is no other way in which to govern humanity. We all have to submit to order. They rule us here in the city of Albany. When we walk the streets we are subject to the police regulations. We meet a man with a star on his breast, and in a manner he is ruler over us. There is no such thing as having a civil organization without having rules. We are not even allowed to deliberate in this chamber without having a chairman who, for the time being, rules over us. And do we think these features are severe upon us? Do we murmur because a chairman rules over us? You cannot collect a dozen persons at a neighborhood meeting without electing a chairman. It is necessary for the order and arrangement of the meeting. This rule is limited, to be sure, according to the necessities of the case. Three or four hundred years ago, had I lived, I could pass through the county of Albany and shoot game at my pleasure, and could take fish in her streams without hindrance. But now, sir, on this ground we find a magnificent city. I am met everywhere by the law. I am told that I cannot shoot a bird out of season, even on my own farm, and in my own woods I cannot shoot a woodcock to-day, because the laws forbid it, on the ground that the public interest requires it should not be done. Is this rule oppression? If I walk through the streets of Albany, or ride in my carriage, the law says I must turn to the right, and I must obey this rule. If I should presume to put on my wife's dress and take a walk through the city, I should be arrested by a policeman, because I am disobeying the rule. The law presumes to control

me in a matter of taste. I may not dress as I choose. I am saying this to illustrate how the rule operates upon us. On the Sabbath, the law provides that any unusual noise shall be restrained, and my business must be closed if it be noisy, so that men may go to the sanctuary and worship God in quiet. We do not chafe at this, and we do not complain of it. Why not? Because Albany gives us back more than she takes from us. I am safe in my person and in my property, and I have the liberty to worship God according to the dictates of my conscience quietly, and I am protected. So with the wife, the husband rules over her, and with this rule she receives the protection that belongs to the marriage relation, and all those interests dear to her; the protection of the honor of her children and her security while rearing them. She could not have it but for manhood—womanhood is protected, and she gets back more than she yields, in yielding to this rule of the husband. The city of Albany has no special tenderness towards us, it is simply an inflexible rule which is over us all alike; but the husband and wife are bound together by a tie so tender, and this rule sits so lightly on the women, it is no burden and the women do not feel it so, at least they never did feel it so until these perambulating women went about the country telling them how much they were abused.

Mr. BARTO—I understood the gentleman to state, in the opening of his speech, that he was superior to any women that ever lived.

Mr. HAND—Oh no, no, you misunderstood me and if I am put down so I wish to have it changed.

Mr. KINNEY—I think the gentleman stated substantially that—I so understood him.

SEVERAL MEMBERS—Oh, no.

Mr. HAND—Oh, no; the gentleman is mistaken. I am so much interrupted that I am thrown off the course of my argument. I was going on to say, sir, that the peculiar characteristics of woman fit her for her place. The one who made woman made also the marriage relation, and He knew what He was constructing. It is exactly the place for her; she is gentle, kind, affectionate, patient and sympathizing. she understands children, she loves them with a love of which no father can have any conception. Oh! how often has the mother of every one of us shielded us when the sternness of the father has seemed to eventuate in tyranny towards us; how often has the unbidden tear dropped for us; although she did not interfere by words, yet she would show where her heart was, and what was the nature of her sympathy. That is the office of woman—kindly, considerately, patiently and laboriously to carry out the sweet influences of home, and to produce an influence on her children, as long as those children live; an influence that never dies, though everything else may pass away. A man may be exposed to temptation, and may fall into sin, but whatever his condition in life, the memory of that mother, watching over his childhood slumbers comes back to him, with its influence and power, long after the man has entered into the relations of citizenship. Not only is the influence of the mother upon the child to be affected, by thus unsexing woman, and taking her out of the family circle and making

her mingle in the coarser affairs of life, sitting in the jury box, upon the bench, and going into the battle-field, but it also interferes with the influence she exerts upon her husband himself. We were told by the gentleman who delivered that beautiful poem [Mr. Curtis], the melody of which still rings in my ears—that poem so rich in its cadences—that the power of women in our late national struggle was at least equal to that of man, which remark I will consider in due time. I had noticed for a number of days that in the corner around that gentleman's seat, there was a great fluttering of silks, laces and feathers, and it rather surprised me that they should all be found around *there*, to the cruel neglect of the more substantial personages in and about the regions of "Sleepy Hollow." But at length the whole thing was revealed, when that poem was delivered here. I have no doubt but that delightful poem will be bound in green and gold, and will be found on the center-tables of all his fair clients and will be regarded by this age and by coming ages, as one of the most magnificent works of fiction of the day. There is another quality about the organization of the marriage relation: "Therefore the twain shall be one flesh." The great beauty and power and usefulness of the marriage relation consists in its oneness; it is a circle where there is but one interest. We go out into the world and meet with competition; hard-hearted men have designs upon us; there are competitors to us everywhere. There is nobody we can trust, we are fearfully suspicious of everybody in this hurly-burly of life; but there is a circle in which there is but one interest; established by the marriage relation. In that family circle, the husband with all his cares and expectations can come and pour into the willing ear of his partner everything that concerns him. If he have political aspirations he can confide them to her; if he hope to make successful operations in a pecuniary point of view, he can come there and confide them to her and she sympathizes with him. He does not find there a competitor, one who has her money and who keeps her property by itself, who demands from him pay for her labor, and if she sews a button on his coat, charges him three cents for it. [Laughter.] He does not come there and find a person who has property, and he has property, and they have separate interests, and make entries every night one against the other, and who can sue and be sued, one by the other. But where there is the pure marriage relation then the wife has the same interest with the husband; there is the beauty of it and its power over the husband and the children. There is no contention there, it is a place of peace. It is the only part of Paradise that has survived the fall. If he has political aspirations, if he is a candidate for office, he can give all the details of his preparations to his wife, she sympathizes with him, and she goes about among her neighbors and finds out what the public opinion may be in a manner that he could not do; for it is one of their peculiarities that they know what is going on, and keep an account of the doings outside, although they do live in the house. She is a great help to him, in the matter of ascertaining public opinion

—she is not a competitor, mind you! She is not a candidate for the same office herself; she does not belong to another party from him, and every word that he whispers to her go and convey it to the leaders of her own party. Do you not see how these two interests would break up the unity of that family relation, and break up all those sympathizing feelings and all that kindness and everything pertaining to that relation, and which now gives it its power? If gentlemen cannot see that, I see it very clearly. The great power of this family relation consists in its unity, and the relations existing between its members; in its evenness of purpose and oneness of interest, making it an impossibility for two interests to exist. But the moment this idea of separate interests comes to the domestic hearth, its influences are destroyed. I know it is claimed that a great deal has been done for woman within the last twenty years. I think not. I think that woman has been deteriorating ever since this question of their rights has been agitated. The statistics brought forward by my friend from Columbia [Mr. Gould], show that the number of female criminals has very much increased; that the numbers in all our jails have been largely increased within the last twenty years, since this thing has been agitated. I pledge myself, that if you pursue this investigation, you will find that the applications for divorces have increased ten-fold within the last twenty years. You have loosened the bonds of matrimonial life and thrown all this family influence away; you have broken up the family and made it to consist of two interests; and when you get them sufficiently divided, it will be like any other partnership, to be entered into and dissolved at pleasure; and then what will become of all our family relations? Who will then bring up the children, under all those precious influences of home, until they come up to manhood? You will have thrown two interests into the family, the man one and the woman the other, with all their interests divided one from the other, they will not have a single bond of unity, not a single thing in common, not a single matter upon which they can sympathize. I dwell upon these things, to show you that the whole marriage relation is destroyed and sacrificed and the marriage tie will be destroyed forever. It will be simply a partnership. The man and woman will live together as long as it will suit their convenience; and then when the woman charges a little more for her labor than he likes, he says: I can go down street and get another woman who will work cheaper; and so he will go and take in the other woman. That is precisely the practical working of the thing.

Mr. M. I. TOWNSEND — Will the gentleman give way for one moment.

Mr. HAND — Certainly, if I do not lose my right to the floor.

Mr. M. I. TOWNSEND — I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. M. I. Townsend, and it was declared carried.

Whereupon the committee rose, and the President *pro tem.* resumed the chair in Convention.

Mr. ALVORD, from the Committee of the

Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and to ask leave to sit again.

The question was put upon granting leave to sit again, and it was declared carried.

Mr. BELL moved that the Convention do now adjourn.

Which was lost.

Mr. VAN CAMPEN — I move that the Convention take a recess until half-past seven o'clock this evening.

The question was put on the motion of Mr. Van Campen, and it was declared carried.

So the Convention took a recess until half-past seven.

#### EVENING SESSION.

The Convention re-assembled at half-past seven o'clock.

Mr. KINNEY asked leave of absence for himself for two days.

There being no objection thereto, leave was granted.

Mr. GOULD asked leave of absence for Mr. Huntington until Thursday next.

There being no objection thereto, leave was granted.

Mr. MERRITT asked leave of absence for Mr. L. W. Russell, until Saturday evening, on account of sickness in his family.

There being no objection, leave of absence was granted.

Mr. GOULD asked leave of absence for Mr. Cochran, until Wednesday morning.

Mr. BICKFORD — I shall object, Mr. President, to the granting of leave of absence, unless some reasons are given.

Mr. GOULD — The reason why I ask for leave of absence for Mr. Cochran is that he has not been absent from the Convention a day since our session commenced, and it is absolutely necessary for the transaction of some private business that he should be absent until Wednesday morning.

The objection being withdrawn, leave of absence was granted.

The Convention resolved itself into Committee of the Whole on the report of the Committee on the Right of Suffrage and Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the chair.

The CHAIR announced the pending question to be on the amendment of Mr. Curtis to the amendment offered by Mr. C. C. Dwight to the report of the Committee.

The CHAIRMAN — The gentleman from Broome [Mr. Hand] is entitled to the floor, but as he is not present, what is the further pleasure of the committee?

Mr. BICKFORD — The question of suffrage for the women of the State is regarded by some in a ludicrous light, it seeming to them too absurd to be seriously entertained. I look upon it as a serious question. It is seriously proposed, and has been gravely and ably advocated in this Convention. It is advocated elsewhere with great persistence, to say the least. It must be met in

some way; and, in my opinion, it should be met, not by ridicule, but by fair and legitimate argument. And as I am opposed to female suffrage, both on principle and for reasons of expediency, I would hope that the arguments against it might be of such force, and so convincing, as to set the question at rest, not only now but for all the future. And I purpose, according to my limited ability, to meet the question in the manner I have suggested. For one, Mr. Chairman, I believe in the christian religion. I believe that the Bible contains the word of God. I hope this avowal will not be considered out of place in a dignified Convention of the people of this State. In that apostolic doctrine which is pre-eminently the standard of the christian faith, and which furnishes the principles by which the christian should order his life, I find duties enjoined for persons in all circumstances and relations. I find that the marriage relation, as instituted by the Creator himself in the garden of Eden, is recognized and enforced by the Redeemer of mankind and by his apostles. That a man should leave father and mother and cleave to his wife (by which I understand that he should himself become the head of a family) and that the twain should be one flesh, having united and identical interests, is a part of the christian religion, though in force from the beginning of the race. While children are enjoined to obey their parents, the husband is expressly declared to be the "head of the wife" and the wife is expressly required to obey and reverence her husband. To every reflecting mind it is apparent that there must be subordination in the family, and that one or the other of the parents must be at its head. There are cases where the wife rules the husband, but every man who is thus ruled is an object of just contempt, and the wife who thus rules is justly regarded as an odious anomaly. The teachings of nature and of revelation are in harmony on this point. Adam was first formed, then Eve as a suitable help. While Adam took the lead in their joint affairs, the law of God was kept, and the pair maintained their primeval innocence and happiness. But when Eve took the lead, then came disobedience sin, death and ruin. "Adam was not deceived, but the woman being deceived was in the transgression."

It has pained me to hear this cause of female suffrage advocated on principles hostile to the word of God. A talented lady, speaking in behalf of the cause she has so much at heart, saw fit to say in this hall, not long since, in substance, that as we, in this day, had got the better of "servants obey your masters," so she hoped we might soon get the better of "wives obey your husbands." When we *do* get the better of *that* salutary commandment, we shall probably, also, get the better of another commandment, which says, "husbands, love your wives." The abrogation of the last will quite likely follow the disregard of the first. It is as much the duty of servants to obey their masters now as it ever was. There is no living in civilized society, unless servants are taught to obey their masters, and feel it their duty to do so. But that a servant is necessarily a slave I deny. So I deny that it makes a wife a slave to obey her husband.



When the husband loves his wife, as he is likely to do if she behaves herself amiably in the spirit in which Sarah obeyed her lord, her obedience is not servitude. It becomes a cheerful and ready compliance with what is for the mutual honor and benefit of both husband and wife. At present it may be convenient to ignore the commands, "servants obey your masters," and "wives obey your husbands." How soon it may be convenient to do away "children obey your parents" and "husbands love your wives," I do not know. But I feel warranted in saying that the cause which cannot be advocated without putting aside the word of God is a cause which should not commend itself to christian men and women. I sincerely believe that to confer the elective franchise on all the women of the State, will sap the very foundations of civil society, and cause more evil than even our republican institutions have caused good, much as I value them. We might admit a few, for instance, such unmarried women and widows as are taxed to any considerable extent. But where there is no property qualification and the suffrage is nearly universal, except as to those deemed too young, the evils that would ensue are palpable and appalling. The unerring instinct of both sexes is against it, reason is against it, and the experience of mankind is against it. The advocates of female suffrage rely much upon the statement in the Declaration of Independence, that "governments derive all their just powers from the consent of the governed." But this really affords them no aid. The fathers, in adopting the declaration, had no reference to the question of suffrage whatever. "The governed," according to their intent and meaning, were governed States, nationalities, countries, colonies or provinces, not individuals. Their point was, that the king of Great Britain had no longer a right to rule in these colonies, because the colonies no longer consented to be governed by him. They were justifying their action in changing their form of government and forsaking their former allegiance to the British crown. Hence they recounted the tyrannous acts of their former king, and formally withdrew the assent of the colonies they represented to be any longer under his government. But they said not a word in the declaration about the proper distribution of political power among the people — not a word as to the proper persons to be intrusted with the elective franchise. But they and their contemporaries *did* act on the question of the franchise, and how? They were very far, indeed, from making it universal. In general they confided it only to adult, property-holding male citizens. In general it was denied to females, to minors, to colored men, to men destitute of property, and to aliens. If a State contained say 400,000 inhabitants, and if of these twenty thousand enjoyed the elective franchise, and eleven of the twenty thousand united in the choice of rulers, or in the form of the government, they considered their condition as to the "consent of the governed" as amply fulfilled. It was the consent of the governed state, given by a majority of its ruling class, that they were after, and were talking about. It was the public will, expressed according to the usual forms, and by the persons

empowered to express that will, that satisfied all their conditions. The advocates of female suffrage, therefore, derive no real aid from the Declaration of Independence. It is a false application of the statement, a total misapprehension of its real import, which makes it give any seeming support to their claim. They also quote the often expressed sentiment of our Revolutionary fathers, that "taxation without representation is tyranny," and their argument is this: The women are not represented because they do not vote; but they are taxed; and, therefore, they say, a government which does not allow them to vote is a tyrannous one, and consequently wrongful. But neither in this matter had the fathers any reference to the question of suffrage. Their point was, that any province, district, colony or State not represented in the British Parliament could not be rightfully taxed by the Parliament. The colonies, said they, are not thus represented, and, therefore, for the British Parliament to tax them is tyranny. They illustrated their idea by a picture, in which John Bull, looking at his sovereign, King George, and pointing at the same time to a Yankee representing the colonies, says: "I gave you that man's money for my use." And to this the Yankee replies, "I'll not be robbed." They called it robbery for the British Parliament to give to the king, for the use of Englishmen, the money of the colonists who had no voice whatever in Parliament. But they did not consider it tyranny for Parliament to lay a tax on Yorkshire or on the city of London, though none of the women voted in either place, and not a fifth of the adult men. These places, as places, were represented, and so were the people who inhabited them, according to the meaning of the fathers, although the voting portion of the population was very small. Reference is made by the advocates of female suffrage to female rulers, particularly to Queen Victoria and to Queen Elizabeth. There have been four female sovereigns who have ruled England — Mary, Elizabeth, Anne and Victoria. Mary's reign was chiefly distinguished by a cruel religious persecution, which gave her the well-earned title of "Bloody Mary." Elizabeth was a woman of vigorous mind, which enabled her to rule with great success, though she was much aided by the many wise and virtuous statesmen who flourished in her court. Nevertheless she was a most merciless, capricious and unjust tyrant. Witness her conduct towards her cousin, the Queen of Scots. Is Elizabeth's conduct on that occasion calculated to exhibit in a favorable light her sense of justice, her hospitality, or her mercy? Besides being unjust and unmerciful as a sovereign, she was odious as a woman, as incorrigible old maids intrusted with property and power generally are. [Laughter.] Queen Anne's reign was distinguished by brilliant national success. Yet she was a stupid, self-willed and bigoted woman. The great Duke of Marlborough, who ruled the weak-minded queen through his wife, who had a strange control over her, threw a halo of resplendent glory over her reign; for it was he who, combining his efforts with wise statesmen on the continent, at length humbled the pride of Louis XIV. Victoria, the present queen, is an amiable and excellent woman. But



it has never been claimed that she was a woman of superior intellect or capacity. Her influence on public affairs is almost nothing. Great Britain is really governed, as everybody knows, by the talented statesmen who, by their combinations, are able to command a majority in the House of Commons. If the Queen were totally insane and imbecile, as was her grandfather in the latter years of his life, the government of her kingdom would proceed very much as it does now. There have been other female sovereigns, and some of them, as Smiramis and Catherine II, of great administrative talent. But these women were a scandal to their sex, and tyrants of the most odious description. Spain has now a reigning queen. I believe it is not claimed that her reign reflects any honor upon herself or on her country. Certainly it is about as bad as any possible reign for her people. It is contemplated by the advocates of female suffrage, that if women vote, they are to hold office and sit on juries. They will aspire also to the bench of justice. And in this view it becomes proper to inquire whether women are likely to be good legislators, judges and jurymen. I will not speak of their mingling indiscriminately with men in the halls of legislation; nor of six married ladies being shut up as jurors "in some private and convenient place," with six men who are not their husbands, and of the constable's key being turned on them until they shall be able to agree. [Laughter].

At this point in the remarks of Mr. Bickford, the gavel fell, twenty minutes having expired.

Mr. SILVESTER—I hope that unanimous consent will be given for the gentleman [Mr. Bickford] to finish his remarks.

The CHAIRMAN—The Chair does not see how it can contravene a rule of the Convention.

Mr. E. BROOKS—I understand that the same rule prevails in the Committee of the Whole, that prevails in the Convention.

The CHAIRMAN—The Chair so understands it.

Mr. E. BROOKS—I suppose that the rule might be extended in committee by unanimous consent.

The CHAIRMAN—The Chair is not of that opinion. The rule can only be extended by authority of the Convention.

Mr. BICKFORD—May I not proceed with my remarks, by unanimous consent of the committee?

The CHAIRMAN—If there is no other gentleman that desires to speak, the Chair is of the opinion that the gentleman may proceed by unanimous consent.

Mr. FOLGER—I do not object to the gentleman from Jefferson proceeding, provided it would not form a precedent for every gentleman to overstep the limits of the time fixed.

Mr. HAND—I suppose that the ruling will not interfere with my continuing my remarks.

The CHAIRMAN—The gentleman from Broome [Mr. Hand] having given way for a recess, and not being here on the re-assembling of the Convention, and when it again went into the Committee of the Whole, the Chair holds that the same rule must apply to that gentleman as to others.

Mr. KINNEY—Will it be in order to move

to allow the gentleman [Mr. Bickford] to have the remainder of his speech printed?

The CHAIRMAN—The Chair is of the opinion that no such rule obtains in the Convention.

Mr. E. BROOKS—I suppose, Mr. Chairman, that if I have the floor, I can have the privilege of according a portion of my twenty minutes to the gentleman from Jefferson [Mr. Bickford]?

The CHAIRMAN—The Chair is of the opinion that the gentleman cannot occupy his time except by his own remarks, and that he cannot transfer his rights to another.

Mr. SPENCER—I desire, for a few moments, to address the committee on the subject now before it—

Mr. HAND—I would like to ask the Chair whether I can make a second speech on this subject.

The CHAIRMAN—The Chair is of the opinion that the gentleman [Mr. Hand] cannot, under the rule.

Mr. HAND—Can I not by unanimous consent?

The CHAIRMAN—If there is unanimous consent given, and no other gentleman desires to speak. The gentleman from Steuben [Mr. Spencer], has the floor.

Mr. SPENCER—I am not among the number of those, sir, who believe that this subject is by any means yet exhausted, and I have observed with great pleasure, that during the more recent parts of the discussion upon this subject, there has evidently been given to it a much greater degree of study, and the opinions of gentlemen have been expressed with a far greater degree of care than appeared to have been bestowed during the earlier part of the discussion. I do not know, indeed, that I shall be able myself to submit to the committee any new idea upon the subject, but it is perhaps possible that I may present my ideas in such a light as shall enable some members of the committee to come to a more just conclusion, if these ideas shall receive a due consideration. This subject, sir, is one of the most important that can come before the Convention, if not the most important. The question of suffrage is one which lies at the very foundation of the government, and, as that shall be determined, may depend the permanency and the stability of the government of this State during a long period of time, if not during all time, and may depend also the happiness of those whose fortune it may be to live under it. There have been several theories advanced here as to the true ground upon which suffrage may be exercised. Among these it has been alleged, in the first place, that the right of suffrage is a natural right which belongs inherently to every person under all circumstances. Another theory is that although it may not be among the inherent natural rights which attach to a person as an existent being, it nevertheless attaches to every person when he becomes a member of civil society, and that, as a member of civil society, he has the right, independently of any power which may be conferred upon him, to vote. There is another theory still: that civil society, when organized, has the power arbitrarily to confer upon any member of the State, the right to the exercise of suffrage, or to

withhold the same at pleasure. Now, sir, among these conflicting views, all of which have been advanced here, which is the true and correct one? And perhaps it may be said that it is neither, but that the true ground and theory upon which the right of suffrage may be exercised lies in some medium between all three of these. And to determine what is the true rule and true principle upon which suffrage should be exercised, or upon which the right of it should be conferred, it is perhaps proper to consider for a moment the nature of the government under which we live. Sir, it is a representative government. It is not a democracy where the people in their original right exercise the power of making the laws and of administering the government. Neither is its character such that the people delegate to mere agents and mere servants the power of making the laws; but the true principle of the government is that the people confer upon certain instruments the power to exercise the functions of government precisely in the same manner as the absolute monarchies of the old world, and these instruments, whenever they are selected, perform the functions of the government with an absolute power, as any other government; but the instruments who are to exercise the supreme power of the State are selected from time to time, and the period of their exercise of power is limited, under our form of government, and, therefore, it is that, from time to time, the electors of the State, those who may be invested with that power, select from among their number those who shall, during specified periods, perform all the functions of government. Now, then, the question is upon what members of the political community is it proper, is it right, is it just to confer this power? And by what rule is it to be conferred? One gentleman, to-day, has undertaken to say that during the whole of this discussion no rule and no principle has been laid down or defined by which it may be determined who ought and who ought not to exercise this power. I listened in vain during the whole of his argument upon that question to see whether he himself would lay down any rule or any principle to which we could refer in determining upon whom the right of suffrage should be conferred, and who should be deprived of that right. I listened also with great care to another gentleman who spoke on the same subject, and apparently with the same view, but I did not learn from him any such unbending rule, or any rule to which we could refer for the determination of this question. Now, sir, upon whom should this right be conferred? Upon those and those only whose exercise of the power will tend to promote the great end and the great object of government, and that is the security of person and property and the security of every person in the pursuit and enjoyment of happiness. And how shall we determine who these persons are, for that is the real question before the committee. How shall we determine who are fitted and who are not for the exercise of this great privilege? And let me here say that to exercise the functions of government, requires a degree of capacity; that it requires a degree of

intelligence; that it requires a degree of experience which is not required in the person who merely exercises the elective franchise. Let me say again, that the exercise of the right of suffrage requires a far less degree of intelligence, a far less degree of experience, a far less degree, if you please, of a knowledge of our political institutions than the exercise of the functions of government; that it requires different qualities; that it requires a less degree of intelligence and a less degree of understanding to enable a person to determine who is the proper person to exercise the functions of government, than to exercise the function of government itself. Now, sir, looking upon the various classes who are proposed for the exercise of the right of suffrage, how many or how few of them, indeed, have the intelligence and the capacity, if you please, to select from among themselves those who are to exercise the functions of government. It may be said that there are almost none, or if any, they are so few, that they constitute no appreciable number of the members of the State. Now there have been several classes proposed here for disfranchisement, of those who are not supposed to be fitted for the exercise of that duty and of that privilege. Among these, first, are idiots, lunatics and persons of unsound mind, and it will be apparent at the very statement of the question, that these are not fitted for the exercise of suffrage; that they do not possess the necessary qualifications of mind or intelligence. Now, not only should the elector possess intelligence, but he should be possessed of the will to exercise his right, properly to perform his duty suitably. I find there is another class which it is proposed to exclude from this right, and that class is composed of criminals, persons who are guilty of offenses against the laws, and here again, the safety of the State requires that those who are ill disposed toward it, who do not yield obedience to the laws, should have no part in the framing or making of those laws. Again, it has been proposed to disfranchise another class on account of its color. The question here is, does this class as a class possess the necessary intelligence to exercise suitably the duty of suffrage, and do they possess the will to exercise that privilege properly. No one has had the boldness to assert upon this floor that they did not possess these requisites. Now, it was stated by the gentleman [Mr. Murphy] who moved the amendment to the report of the committee upon this subject that as a matter of opinion he did not think the admission of this class, excluded by the present Constitution, would add any strength to the government of the State. Why, sir, what constitutes the strength of a State? What is essential to the permanency of the government? What is it that makes it what it is? It is the affection and the love of its constituents; and whence comes this love and affection? It arises from the fact that those who constitute the State have a share, or have a right at some time to have a share in the administration of its government, and in the same degree that any class of the citizens of equal number adds strength to the State, the black citizen of the State may add to its strength, and to its perma-

nency. Now, sir, these are the principal classes whose case has been under discussion before this committee, and the exercise of suffrage by all these classes may be referred to this rule that I have laid down. In the first place, the right of suffrage should be exercised by those whose exercise of it will contribute to the great ends and aims of government; that it is to be exercised by those who have the intelligence in the first place, and the will in the second place to perform that duty properly. Now, in regard to most others than the classes I have mentioned, it is impossible to define by any practical rule or upon any practical principle any distinction in the degrees of intelligence which may be required for the exercise of suffrage, or any degree of good disposition towards the government; therefore it is that, I say, that all members of the community, with the exceptions I have named, may, at some time, become possessed of this right. Perhaps it will be said, and I doubt not that it will, the rule which I have laid down will admit to the right of suffrage women, and indeed, sir, they do come within the principles that I have mentioned, except, perhaps, that their exercise of the right of suffrage may not, as I have said in regard to other classes, necessarily contribute any to the strength of the State. But I am opposed to the amendment which has been introduced in that regard, and for this reason, that during the whole existence of the human race, it has never been known that women have been admitted to this right, and it has never been known, and it is not known now, that they as a class have to any considerable extent asked to be admitted to this privilege; and it has never been known, nor is it known now, that the other sex, in any considerable numbers, have required that they be admitted to this privilege, and, therefore, it seems to me at this time to be inexpedient to extend the right of the elective franchise to them. And here I may be allowed to protest against any inference which is attempted to be drawn from the examples of some illustrious women of the world who have exercised political power wisely and well, and to call the attention of the committee to examples of another character, as has been done to some extent by the gentleman from Jefferson [Mr. Bickford], where the political power when exercised by women was of the most disastrous character—

At this point the gavel fell, the twenty minutes having expired.

Mr. SILVESTER — Mr. Chairman—

Mr. BICKFORD — Mr. Chairman, I was about to make a request of the committee to be allowed to continue my remarks on the assumption that no one else desired to speak.

The CHAIRMAN — The Chair is of the opinion that the gentleman from Jefferson [Mr. Bickford] is out of order. The gentleman from Columbia [Mr. Silvester] has the floor.

Mr. SILVESTER — Were it not that as a bachelor, Mr. Chairman, I feel that I have a personal interest in the question before the committee, and that it is necessary for me to give a reason for the vote which I shall cast in the negative upon this question, I do not know that I should occupy the attention of the committee after the indulgence that was extended to me the other

evening. No person is more desirous than I am that every right shall be accorded to woman which her position entitles her to claim, and which it is necessary for her protection that she should possess. I yield to no individual in sincerity and determination of purpose to extend to her every courtesy and privilege which the most refined and even the most extremely chivalric gallantry can demand. But I have not been convinced by the arguments which have been advanced in the pamphlets which have been circulated among the members of the Convention by the friends of female suffrage, that the conferring of the elective franchise is necessary for her protection, is required for the enforcement of any of her rights, or will add to the dignity of the position which she now occupies. Neither have the views which I entertain in respect to this subject been altered by the able, eloquent and elegant address of the gentleman from Richmond [Mr. Curtis]. Probably there is no member of this body who has not, in the past, derived delight from perusing the fascinating, instructive and finished productions of that gentleman, or been charmed with his public addresses in the literary lecture-room, or before political assemblies. And none of us can have failed to feel the influence of his polished, elaborate, classic and eloquent remarks upon the subject now under discussion. And though, since then, day has faded into twilight, though the shades of evening have once and again come and departed, though dawn has repeatedly brightened into perfect day, I still linger entranced by the spell of his fascinating and bewitching oratory. But yet I am constrained to differ from him in many of the views which he has expressed, and to oppose the amendment which he has introduced, and has so ably advocated. It is not my intention however to attempt any formal refutation of the argument adduced by him, but simply to state very briefly some of the suggestions which have occurred to me in reflecting upon this subject. And in considering "an innovation which," in the language of the report of the committee, is "so revolutionary and sweeping, so openly at war with a distribution of duties and functions between the sexes as venerable and pervading as government itself, and involving transformations so radical in social and domestic life," I propose to refer to the Bible as authority and my first objection is founded upon the doctrine therein contained that the wife must be in subjection to her husband, and that in public assemblies females should keep silence and should be keepers at home. The first of these rules must be violated unless the wife votes precisely as her husband does and in accordance with his commands and instructions, which would destroy all independence of action on her part, and for this the advocates of female suffrage certainly will not contend.

Mr. LAPHAM — Will the gentleman from Columbia [Mr. Silvester] allow me to ask him a question? Does not the same authority require that servants should obey their masters?

Mr. SILVESTER — That suggestion has been already answered by the gentleman from Jefferson [Mr. Bickford] and I do not propose to answer it again at this time. The second injunction, that



woman should keep silence in public assemblies must be violated because she invariably will be led into talking at public gatherings. It is proverbial that women love to speak. It seems to be a natural quality with them. All of us have experienced the pleasure which flows therefrom in the charmed circle of domestic and social life. Once introduce them within the range of politics and they will be constantly exercising their peculiar gift, and will be enlightening the electors of the State from every political platform to which they can have access. But again, the third injunction will be violated, which requires that they should be keepers at home. We can see how it is violated now. We have only to refer to the reported proceedings of the meeting of the American Equal Rights Association, held this year, to learn the extent to which they will be kept from home by engaging in politics. This report states that Lucy Stone is already in Kansas, "speaking in all her towns and cities—in churches, school-houses, barns and the open air; traveling night and day, by railroad, stage and ox cart; scaling the rocky divides or fording the swollen rivers; greeted everywhere by crowded audiences of brave men and women." Give to females the right to exercise the elective franchise, and they will be everywhere else but at home; and although in this day of apologies for bonnets, the scripture rule that women should have the head covered, is daily violated. [Laughter.] Voluntary disobedience of one precept is no argument for our permitting her to transgress others. We have already gone almost as far as possible in dividing those who have been joined together in the most solemn manner, by according to the wife nearly the same rights of holding and acquiring property and conducting business on her own account, as if she were a *feme sole*; and such an advanced stage of progress has already been reached in this respect, that instead of the wife being, as one gentleman has stated, merely an appendage to the husband, the husband in very many instances is now hardly anything more than an ornament to the wife. The very arguments of the advocates of female suffrage contain some of the strongest reasons against it. Samuel J. May, one of the shining lights of the Equal Rights Association makes use of the following language:

"The true family is the type of the true State."

And again,

"What should the government of a nation be? Ought it not to be as much as possible like the government of a well-ordered family? Can you think of any model so good as the divine model set before us in the family? What would the family be with a father and without a mother?"

Now, what is the true structure of a family? In the old Saxon idiom, the husband is the "house-band"—he is the center around which the family clusters. He is its head and main dependence and the happiness and prosperity of the whole family, are promoted by obedience to the head, not an enforced and an unwilling obedience but a cheerful and prompt compliance. There are certain peculiar duties pertaining to each member of the family, and no one can discharge those which are within the appropriate province of another without violating the

beauty and harmony of the domestic relations. What is beautiful in the boy may not be in the man; what is beautiful in the wife may not be in the husband, and the converse of the proposition is equally true. The father of one of the most active advocates of female suffrage recognized the fact that woman was transgressing her appropriate sphere in entering upon public life, by addressing her after she had commenced her career as an orator as "my dear sir" and subscribing himself "I am, dear sir, very respectfully yours." And so, too, the gentleman from Jefferson [Mr. Bickford], when acting as chairman of the meeting in favor of female suffrage in this hall a few evenings since, in introducing the speaker of the evening, instinctively spoke of her as "Mr." Lucy Stone. [Laughter] But, sir, in addition to what I have already submitted, the right to vote is not demanded by the majority of the females themselves or by any considerable number of them. When I make this assertion I judge from my own neighborhood, and I know of hardly any of the ladies of the town in which I have the honor to reside, who desire to exercise the elective franchise, or who would go to the polls if permitted so to do, and I am not willing to admit that any section of the State, has more accomplished, more patriotic, more public-spirited, more high-souled, more active females than the old town of Kinderhook. I feel assured that if the question should be submitted to them for their decision, it would receive an almost unanimous vote in the negative. I came here uninstructed as to the course I should pursue upon this floor as a delegate except upon this one subject. The ladies of my acquaintance gave me as a parting instruction a direction to vote against female suffrage, and knowing that I am a very modest and diffident man [laughter], they enjoined upon me, if I should dare to speak at all in this body, to raise my voice and utter my protest against the measure. Page 1 of the pamphlet of the Equal Rights Association which has been laid upon our tables shows that it is only about a half dozen "live women" in the words of Miss Anthony, who are creating this sensation throughout the country, who are canvassing the State of New York and besieging the Legislature and the delegates to the Constitutional Convention with tracts and petitions. One week we see them in Kansas, agitating the question of female suffrage there, and the next week they are in this hall advocating their views or publishing private appeals. But in order to magnify their numbers, they are active in traveling from one quarter of the land to another. They make their forces in this manner appear very numerous and powerful, so as to induce men who always yield in the end to the demand of woman, to believe that it is her desire to claim this privilege. They resort to the artifice of the Dodge Club, when in its journeyings in Italy it was attacked by brigands and captured. One of their number had in his possession a revolver and by ingeniously passing it in the shades of the evening from one to the other, the brigands supposed that all were armed with that terrible weapon. But it is said there is no representation for females, and that as she is taxed, she should have the right to vote. For-



eignors and minors hold property and pay taxes, but cannot exercise the elective franchise. I deny, however, that women are unrepresented. The husband represents the wife; her influence operates powerfully in controlling his conduct, even in political matters, and with respect to the ladies who are yet unmarried, those of us who are bachelors are only too happy to consider ourselves as representing them and casting a ballot for them at the polls. But with the right to vote will follow the right to hold office, and if female suffrage is accorded, we shall soon see posted up in every public place the announcements such as "Mrs. Amelia Wilhelmina Squiggs, a candidate for Congress, will address the citizens of Booneville on the exciting and important issues involved in the next election." [Laughter.] And as they cannot ask to have the privileges without sharing the burdens, they must be liable to jury and militia duty. If they shall be allowed or required to serve upon juries, it will be necessary to enlarge the jury-box of every court-house to provide for their admission, on account of their expansive crinoline. [Laughter.] And could any woman be expected, if sitting on a grand jury, to observe that part of the oath which enjoins that the counsel of the people and their fellows, they shall safely keep; it would be only another instance that a woman cannot keep a secret. [Laughter.] And, sir, suppose we consider them as enrolled in the militia, what uniform are they to support? Are they to don the regulation pattern of the national guard of the State of New York, or are they to appear in expansive crinoline, in flowing train, in head-dress and waterfall? [Laughter.] Doubtless in the latter. How difficult then, the task of the inspecting officer would be on a field day. Here is a regiment composed of male and female; here is a rank, at the right extremity of which is located private William Brown, next to him appears private Mary Smith, next to her private John Jones, and next to him private Jane Noakes, and so alternately to the extreme left. The inspector stations himself next to private William Brown, and ranges his eye along the line of warriors to test its straightness, but the poor masculine soldiers are completely hidden by the crinoline of the feminine warriors, and the inspector, completely baffled, is obliged to relinquish his task. And when this valiant company shall start to march, with what marvelous rapidity, regularity, and precision would their movements be conducted. [Laughter.] But it is said by the advocates of female suffrage that woman is degraded, and will not be elevated till the ballot has been conferred upon her. I have not been so taught to regard her. The gentleman from Richmond [Mr. Curtis], very fittingly and pertinently inquired: Did any Englishman who rode into the jaws of death at Balaklava, serve England better than Florence Nightingale? And I would beg leave to amend the inquiry by asking: Is Florence Nightingale degraded because she is not entitled to vote? And does not the general verdict of humanity pronounce her career to have been more truly glorious amid the hospitals of Scutari than it could have possibly been if she had attempted to wield the sword and contend on the field of battle for the cross of St. George. It is a slander upon the wives, mothers

and daughters of our land to say that they are degraded; it is a slander upon their noble characters, upon the self-denying patriotism which they have so often exhibited, upon the many virtues which they have illustrated, and upon the many works of genius which they have produced. Are the thousands of females in the land, who, like the Spartan mother as their sons departed from their warm embrace to join the ranks of the defenders of their country, enjoined them to return with their shield or upon it, degraded because they are not invested with the right or privilege of suffrage? But if woman is degraded, will her admission to the position of an elector immediately elevate her? Intrigues figure to a great extent in politics and feminine acuteness of intellect is peculiarly adapted to the field of intrigue. Introduce the female element into politics and intrigues therein will be largely increased, and woman, in place of being elevated will be lowered, and instead of occupying the eminence which she now adorns and graces, might in many instances sink to the level of a petty village politician. But there is another objection, and that is, that the granting of the elective franchise to females would tend to obstruct the way to the polls. It is now frequently difficult to approach the ballot box and at times it is a matter of complaint that all the votes cannot be polled; if, in addition to the other obstacles, the path to the ballot-box is to be rendered additionally inaccessible by the presence of expanding crinoline and flowing waterfalls, we, poor unfortunate masculine specimens of humanity, would be placed on those occasions decidedly in the vocative. [Laughter.] And again, sir, the admission of woman to the elective franchise would interfere with those beautiful dreams in which we all love to wander, and dissipate all the charm which lingers around the ideals of song, romance and poetry. Who could endure to think of Ellen, the bright and graceful Lady of the Lake, leaving her highland home to wrangle around the polling booth? or who would wish to picture Rebecca, the fair Jewess, pressing her way to the polls to enforce her rights, instead of calling upon her faithful Ivanhoe to redress her wrongs? The many tears which have been shed over the sorrowful fate of Lucy, the gentle and unfortunate bride of Lammermoor, would long since have ceased to flow had she been sufficiently advanced to be in sympathy with the doctrines of the strong-minded females of the present age, that all her injuries could have been alleviated or removed by the right to exercise the elective franchise. And though Di Vernon, that peculiarly fascinating creation of Scott, which even at this distance of time can hardly fail to elicit a chivalric love, has somewhat of the character of a hoyden, as fearless and free she gallops over moor and heather on her proud black charger, or appears in almost inaccessible fastnesses in the north of Scotland, yet I feel warranted in saying that a great part of the charm of her character would be lost had she been an advocate for female suffrage. And then, not to speak of the influence which the conferring of the elective franchise upon women would exercise in the domestic circle! What a dismal prospect would be opened up before those of us who are bachelors. Even now it is necessary if any one of us shall happen to be so fortunate

or unfortunate as to become interested in any fair charmer, to neglect all business, to learn poetry, to quote poetry, to recite poetry, to sing poetry, to walk through shady groves and by rippling streams, to make the woods vocal with the name of the adored "Dulcinea." But bestow the right to vote upon the enchantress, and in addition it will be necessary to adopt her political code, to embrace her political views, to swear by her political principles, to support her political candidates, or else our most abject suit may be denied, our most importunate prayer disregarded, our most fervent entreaty unheeded, and we be compelled to remain in a solitary and deplorable state of bachelordom all the rest of our mortal lives. [Laughter.] For one, I take up this night my mournful lamentation and boldly declare that our condition would then be utterly miserable and deplorable. The picture drawn by Solomon corresponds with my ideal of a model woman, and I cannot discover that he enumerates the capacity rightly to exercise the elective franchise as among her desirable or essential qualities.

"She seeketh wool and flax, and worketh willingly with her hands.

"She layeth her hands to the spindle and her hands hold the distaff.

"She stretcheth out her hand to the poor, yea, she reacheth forth her hands to the needy.

"She is not afraid of the snow for her household, for all her household are clothed with scarlet.

"Her husband is known in the gates when he sitteth among the elders of the land.

"She maketh herself coverings of tapestry; her clothing is silk and purple.

"Strength and honor are her clothing, and she shall rejoice in time to come.

"She openeth her mouth with wisdom; and in her tongue is the law of kindness.

"She looketh well to the ways of her household, and eateth not the bread of idleness."

I have always considered a perfect woman, nobly discharging every duty of her station, as a spirit pure and bright, warning, comforting and commanding with something of an angel voice, and moving in an ethereal region elevated above this earthly sphere. I am unwilling to have this charm dissipated; to have woman dethroned from her truly exalted position; to have her sublime mission degraded; and am, therefore, opposed to the amendment of the gentleman from Richmond.

Mr. BICKFORD—I rise to a question of privilege. The gentleman from Columbia [Mr. Silvester], who has just taken his seat, has stated that at the woman's rights meeting in this chamber, at which I was unexpectedly called upon to preside, and which I did very reluctantly, I introduced the speaker, on that occasion as "Mr. Lucy Stone." [Laughter.] I wish to explain in relation to that matter. I did not intend to make such an announcement, and I do not wish the statement to go forth in the reports of our proceedings that I did make such a remark without some explanation. And I take occasion to say here that I did not so introduce the lady; or, if I did, I did not intend to, for I do not think I am capable of such an intentional insult.

Mr. SILVESTER — If the gentleman states that he did not so introduce the lady I will correct my

statement, and make a most humble apology to him.

Mr. BICKFORD — I will say, certainly, that I did not intend to.

Mr. GRAVES — Is it in order to call up a resolution offered by me on the 10th of July as an amendment to the proposition offered by the gentleman from Richmond [Mr. Curtis]?

The CHAIRMAN—The Chair is of the opinion that it is not in order, because there are two amendments now pending.

Mr. GRAVES—My proposition is to give to women the elective franchise, provided they desire it. I offered it then as an amendment, and I desire to speak upon that proposition when it is in order. If it is not in order of course I will not rise to it to-night.

The CHAIR—It is not now in order.

Mr. E. A. BROWN—I desire to ask the unanimous consent of the Convention that the gentleman from Jefferson [Mr. Bickford] may be allowed to finish his remarks.

The CHAIRMAN—The gentleman from Jefferson can proceed with his remarks if there be no objection.

Mr. BICKFORD—I was saying, Mr. Chairman, when my time had expired that, I would not attempt to dwell upon the scene which will be exhibited in this hall, when the Speaker recognizes "the lady from Westchester." [Laughter.] Small chance then will gentlemen have to "catch the Speaker's eye," especially if the Speaker be a ladies' man, as he will be if any man at all. [Laughter.] But the inquiry I make, and it must be made, is as to the average sense of justice and the quality of mercy in the female mind. I feel constrained to say, because the truth demands it, that the female mind is by no means as just or as merciful as the average male mind. Especially towards women, women are notoriously unjust and unmerciful. It will be hard for women when they are tried by women—"by their peers," as has been demanded. May the Lord have mercy on their souls, for the judge and jury will not. [Laughter.] I am not slandering the sex. God did not design them to be judges, nor jurymen, and therefore He has not given them the necessary qualities to fill those stations properly. He has designed woman for a most important and honorable class of duties; and for those He has admirably fitted her. But He has not bestowed on her the judicial mind, for He never designed her to be a judge. We may well pity the women, when women make and administer the laws. Nor will it be much better with men. The laws, as made by men and administered by them, have ever been tender of the rights of women, and especially merciful and forbearing. I was once in my life on a grand jury. A woman complained of a man for striking her. An indictment was found at once, and unanimously. Soon after a man complained of another man for striking him. The case was full as aggravated as the case where the woman was struck. I voted to find a bill, but I voted alone. If a complaint had been made by a man against a woman for striking him, I do not believe even I would have voted for the bill. [Laughter.] My observation is that crimes are committed by

between the two parties as to men. But women, especially in the West, are treated towards the opposite sex, are treated criminally. But if women are occupying their present position as the friends and companions of men, who labor and toil for their support, they are to become the friends of men in all the rough and public walks of life, they must expect to be treated with no more consideration than their male associates. Nothing will be conceded to them more than to men. They must enjoy no more than they earn, and they must stand or fall according to their own conduct. Men who want office must be allowed to jostle the women out if they can. Women who become politicians must expect to be treated like other politicians. Their conduct will be arraigned, questioned, tried, censured, condemned. Newspapers will speak disparagingly of them. Stump speeches will be made expressly to discredit them. They will be slandered, vilified, abused. All their short-comings and peccadilloes will be brought to light, and frightful additions made. Let it not be said that men will be too polite and just to act in this manner towards the ladies. Men may be, for very shame. But men will not be the only politicians. The women will be in the field. And then! and will it be for women candidates. They will be slandered without mercy and without stint. Men slander women? No sir, it will not be necessary. The women will most gladly save them the trouble. And many a lady, who at present is an ornament to society, and the glory of her sex, it may be feared will become a brawling, slandering, unscrupulous, political virago. It will be a sad time indeed for women who aspire to office when women become voters. Nor less sad will it be for society when women shall have forsaken their proper sphere, and when their energies shall be called forth to publicly slander and traduce those of their own sex. In conclusion, I thank the committee for the courtesy extended to me in allowing me to conclude my remarks.

Mr. HAND—Can I have the opportunity of concluding my remarks if there be no objection?

Mr. HARDENBURGH—I move, Mr. Chairman, that we now adjourn, or rather that—

The CHAIRMAN—The Chair will inform the gentleman from Ulster (Mr. Hardenburgh) that a motion to adjourn cannot be entertained in Committee of the Whole.

Mr. HARDENBURGH—I correct myself by moving that the committee do now rise and report progress.

The question was then put on the motion of Mr. Hardenburgh, and it was declared lost.

Mr. HAND—I would like the unanimous consent of the committee to conclude what I have to say on the question pending.

Mr. MILLER—I would like to have the rule read under which we are acting, and by which speeches are limited to twenty minutes.

Mr. HAND—We admit the existence of the rule. It is only by courtesy and unanimous consent that I ask to be permitted to continue.

Mr. BARTO—I hope the gentleman from Broome (Mr. Hand), will be allowed to proceed. I would like to have my district well represented in the debate.

The SECRETARY proceeded to read the resolution adopted Thursday, July 18th, by which after that date speakers on the pending question were limited to twenty minutes.

Mr. MILLER—I called for the reading of the rule that I might learn whether it applied to the discussion of the whole report of the committee or only to the amendment of the gentleman from Richmond (Mr. Curtis). If it only applied to that amendment, I would not object, but it seems to me that we must enforce the rule or we will never have a decision on the report of the committee.

Mr. HAND—I would like to state the reason—

The CHAIRMAN—The gentleman from Delaware (Mr. Miller) having objected, the gentleman from Broome (Mr. Hand) cannot be allowed the floor.

Mr. GREELEY—If we could take a vote on the pending amendment, the gentleman from Merikmer (Mr. Graves) could then introduce his amendment which would give the gentleman from Broome (Mr. Hand) a farther opportunity to address the committee.

Mr. HAND—I gave way for the recess on the express condition that I should be allowed to finish my argument.

The question was then put on the amendment of Mr. Curtis, and it was declared lost, on a division, by a vote of 19 to 43.

Mr. CASSIDY—I call the attention of the Convention to the fact that there is no quorum present and voting.

Mr. RATHBUN—A large number of gentlemen present did not rise and vote.

The CHAIRMAN—The Chair will again announce the question.

The question was again put on the amendment of Mr. Curtis, and it was declared lost on a division, by a vote of 20 to 51.

Mr. RATHBUN—I ask that the roll be called.

The CHAIRMAN—The Chair will inform the gentleman from Cayuga (Mr. Rathbun), that the roll cannot be called in Committee of the Whole. The Chair, however, is of the opinion from the numbers exhibited in taking the vote, that there is not a quorum present, and it will, therefore, ask the President to resume his seat.

The PRESIDENT resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, and that on a division being had in committee, it was ascertained there was no quorum present.

Mr. GREELEY—I move a call of the roll.

Mr. FOLGER—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Folger, and it was declared lost, on a division, by a vote of 26 to 41.

The SECRETARY proceeded to call the roll of the Convention, and the following delegates were found to be present:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Baker, Barto, Beale, Beckwith, Bell, Dickford, E. Brooks, E. A. Brown, Carpenter, Case, Cas-

sidy, Champlain, Corbett, Corning, Curtis, Eddy, Ely, Endress, Farnum, Field, Folger, Fowler, Fuller, Garvin, Gould, Grant, Graves, Greeley, Gross, Hadley, Hale, Hammond, Hand, Hardenburgh, Hiscock, Hitchcock, Houston, Kinney, Krum, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Mattice, McDonald, Merritt, Merwin, Miller, Opdyke, A. J. Parker, President, Prindle, Prosser, Rathbun, Rogers, Root, Rumsey, Silvester, Smith, Spencer, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—71.

On motion of Mr. ALVORD the Convention adjourned.

TUESDAY, July 23, 1867.

The Convention met at 11 o'clock A. M.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. BICKFORD—If it is in order I would now ask leave of absence for Mr. Clinton, of Erie, for to-day and to-morrow. He is under the necessity of being absent to attend a meeting of the State Teachers' Association at Auburn for the purpose of delivering an address before the association.

There being no objection, leave was granted.

Mr. E. BROOKS—I present a petition of the first Directress of the Nursery and Child's Hospital, asking that in regulating the charities of the State, the claims of a foundling hospital may be considered. As this petition presents some information of rather uncommon importance, both to the Convention and State, I ask the consent of the Convention that it be referred to the Committee on Charities and Charitable Institutions, and be printed.

There being no objection, the petition was referred to the Committee on Charitable Institutions, and ordered to be printed.

Mr. REYNOLDS asked a leave of absence for Mr. Clark, until Thursday, on account of sickness.

Which was granted.

Mr. LEE presented a petition of forty-eight citizens of Oswego county, asking that a separate clause to the Constitution, prohibiting the sale of intoxicating liquors, be submitted for the decision of the electors of the State.

Which was referred to the Committee on Adulterated Liquors.

Mr. ALVORD presented the memorial of William E. Pabor and twenty-nine others, citizens of New York, in favor of submitting to the people a constitutional provision to prohibit the sale and use of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. GROSS presented fourteen petitions signed by several thousand citizens of New York, asking for a provision to be inserted in the Constitution regulating the sale of liquors, and against prohibitory legislation.

Which was referred to the Committee on Adulterated Liquors.

Mr. OPDYKE presented a petition from the sons of temperance signed by eighty citizens of the State asking for a constitutional provision to be separately submitted to the people prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. STRATTON presented the memorial of Geo. W. Dilks and forty others, citizens of the city of New York, asking that the Legislature and municipal and local authorities be prohibited from donating or appropriating any money or moneys or property to any sectarian denomination.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. STRATTON also presented eighteen petitions in favor of regulating and against prohibiting the sale of intoxicating liquors

Which was referred to the Committee on Adulterated Liquors.

Mr. RATHBUN presented the petition of E. B. Marvin and twenty-five others, citizens of Owasco, Cayuga county, praying against the donations of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. CURTIS presented a petition signed by Elizabeth Cady Stanton, Margaret Livingston Murray, and twenty-six others, citizens of New York; also a petition of Elwood Valentine, and thirty-five others, citizens of Queens county; also petition of Elizabeth B. Voorhies, and twenty-two others, citizens of Flushing, asking for equal suffrage for men and women.

Which were referred to the Committee of the Whole.

Mr. FOWLER presented the petition of Sarah H. Laird, and one hundred and twenty-six others, citizens of the village of Canastota, Madison county, praying for equal suffrage for females.

Which was referred to the Committee of the Whole.

Mr. FOWLER also presented the petition of C. D. Turner and seventy-nine others, citizens of Hartford asking that the Legislature be prohibited from making donations to charitable and sectarian purposes.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. CASSIDY presented a petition from the New York State Workingmen's Assembly in relation to the eight hour limitation and the homestead exemption act, and asked that it be printed.

Which was referred to the Committee on Industrial Interests.

Mr. FOLGER moved that the memorial of Mr. Cassidy be referred to the Committee on Printing.

The question was put on the motion of Mr. Folger, and it was declared to be carried.

Mr. T. W. DWIGHT presented the petition of M. H. Robinson and thirty-seven others, asking for the prohibition of donating public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. T. W. DWIGHT also presented the petition of John H. McLaughlin and others, asking that a separate clause be submitted to the people prohibiting the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. T. W. DWIGHT also presented a petition from the town of Lebanon, in relation to charitable devises and bequests.

Which was referred to the Committee on Charities and Charitable Institutions.



Mr. FIELD presented the memorial of S. L. Terpening, and fifty others, in favor of a constitutional prohibition of the sale of intoxicating drinks as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. GOODRICH presented the petition of Herman Camp, of Trumansburgh, and two hundred and twenty-five others, citizens of Tompkins, Schuyler and Seneca counties, praying for a constitutional prohibition against the donations of money for sectarian purposes.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HISCOCK presented the memorial of members of the Reformed Presbyterian Church, of the town of Onondaga, asking for a more complete recognition of God as the source of power, and of the divinity of Christ and inspiration of the Holy Scriptures in the Constitution.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. MORRIS presented the petition of S. W. Mills and one hundred and twenty-three others, in favor of prohibiting donations of public money to sectarian institutions.

Which were referred to the Committee on the Powers and Duties of the Legislature.

Mr. DUGANNE presented a petition of Charles J. Grant and one hundred and forty-five others, citizens of New York; also the petition of Ira O. Miller, Edward J. Tichenor, John J. Hoffman, and two hundred and three others, citizens of New York; also petition of Rev. Thomas H. Skinner and one hundred and fourteen others; also petition of Isaac J. Oliver and twenty-five others; also petition of J. H. Handburch and one hundred and fifty-nine others; also petition of William Thompson, L. H. Kirby and others; also petition of William O. C. Kimball and one hundred and twenty-five others; also petition of Rev. Peter Stryker and one hundred and eleven others; also petition of A. W. Walker and one hundred and two others, asking for a provision in the Constitution prohibiting the donation of public money to sectarian institutions.

Which were referred to the Committee on the Powers and Duties of the Legislature.

Mr. E. BROOKS offered the following resolution:

*Resolved*, That the Committee on Corporations, other than Municipal, Banking and Insurance, be directed to inquire into the expediency of making the following amendment to the Constitution:

"All corporations in this State shall be governed by directors to be elected once in each year by the stockholders thereof; and no stockholder shall vote at any election who has not been such for ninety days continuously, next preceding the election."

The question was put on the resolution of Mr. Brooks, and it was declared to be adopted.

Mr. SHERMAN offered the following resolution:

*Resolved*, That the following article be adopted as a part of a proposed Constitution, to be submitted to the people, pursuant to chapter 194 of the Laws of 1867.

#### ARTICLE —

SECTION 1. Exclusive authority is given to

boards of supervisors to legislate in their respective counties on the following specified subjects.

1. The location, erection, purchase, and reparation of bridges, except over navigable streams.

2. The location and purchase of town and county buildings and lands, and the construction, care and preservation of such buildings.

3. The creation of separate road districts on public highways.

4. The discontinuance, with the consent of the corporators, or by lawful abandonment of park, turnpike and macadamised roads, and the use and working of them as public highways.

5. The fencing, working and improvement of public highways, laid out in pursuance of the general laws of the State, in cases where the general laws of the State are insufficient to accomplish the object.

6. The laying out, opening, extension, improvement and alteration of lines of streets in cities and incorporated villages in cases where provision may not be made in their charters, or by the general laws of the State for that purpose.

7. The consolidation of school-districts, the change of boundaries of such districts, the raising and application of the funds consequent thereon, and of funds for the location, erection and reparation of school-houses, where exceeding the amount authorized by the general laws of the State, subject otherwise, however, to such general laws; but no action under this subdivision shall be operative until a certificate of approval shall be made by the Superintendent of Public Instruction, and filed in the office of the Secretary of State.

8. The legalization of the acts of town meetings in reference to the raising of moneys authorized by law, and the legalization of the irregular acts of town officers in cases where the county court shall recommend such legalization.

9. The fixing of the salaries of county officers, and of the number, grades and pay of clerks and subordinate employees in county offices, whose compensation may be a county charge.

10. The draining of swamp lands lying exclusively within the county.

11. The borrowing of money for town and county purposes, in anticipation of taxation authorized by law.

The Legislature shall provide for the publication in such form as they shall deem necessary, of all laws passed by boards of supervisors pursuant to the provisions of this article.

§ 2. The concurrent action of the boards of supervisors shall be necessary to authorize the location, purchase, erection or reparation of bridges between such counties.

Which was referred to the Committee on Counties, Towns and Villages.

Mr. SHERMAN, also offered the following resolution:

*Resolved*, That the following article be adopted as a part of a proposed Constitution to be submitted to the people, pursuant to chapter 194 of the Laws of 1867.

SECTION 1. The Legislature shall provide by general laws for the following specified objects, and they shall not be made in any case the subjects of special legislation.

1. The creation of corporations except for municipal purposes.

2. The adjustment of all pecuniary claims against the State.

3. The laying out and opening of public and private roads except in cities and incorporated villages.

4. The regulation of the fees of State, county and town officers in cases where the payment of fees for official services may be deemed proper.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GREELEY called up for consideration the resolution offered by him yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Convention will proceed on Wednesday, at one P. M., to act upon the article reported by the Committee on the right of Suffrage, as it shall have been reported from the Committee of the Whole; every amendment that shall have been or which may be proposed shall be separately presented, and five minutes allowed the mover to explain and commend it, with a like opportunity for one reply, when the vote shall be taken thereon. All amendments having thus been disposed of, the vote shall be taken by yeas and nays on the article itself.

Mr. AXTELL—I move to lay the resolution on the table.

Mr. ALVORD—I rise to a point of order. The resolution was laid on the table by a vote yesterday; therefore it requires a vote of the Convention to bring it up.

Mr. GREELEY—It was simply laid on the table because it gave rise to debate.

The PRESIDENT—The Chair will inform the gentleman from Onondaga [Mr. Alvord] that the Secretary informs it that the gentleman is mistaken.

The PRESIDENT announced the question to be upon the motion of Mr. Axtell to lay the resolution upon the table.

Mr. GREELEY called for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. VERPLANCK—I want to ask the gentleman from Westchester [Mr. Greeley] a question. Does he intend by his resolution to prevent amendments in the Convention not offered in the Committee of the Whole.

Mr. GREELEY—It expressly says not. The words are clear.

The question was then put upon the motion of Mr. Axtell, and it was declared to be lost, by the following vote:

*Ayes*—Messrs. Axtell, Baker, Barnard, Cassidy, Chesebro, Comstock, Corbett, Corning, Curtis, Daly, C. C. Dwight, Gerry, Hale, Hitchcock, Lapham, Lowrey, McDonald, Roy, Wickham and Young—20.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, Burrill, Carpenter, Case, Champlain, Cheritree, Church, Cochran, Duganue, T. W. Dwight, Eddy, Ely, Endress, Everts, Farnum, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Garvin, Goodrich, Gould,

Grant, Graves, Greeley, Gross, Hadley, Hammond, Hand, Hardenburgh, Hatch, Hiscock, Hitchman, Houston, Hutchins, Krum, Landon, Larremore, Law, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Loew, Ludington, Magee, Masten, Merrill, Merritt, Merwin, Miller, Morris, Murphy, Nelson, Opdyke, A. J. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Rogers, Root, Rumsey, A. D. Russell, Schumaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Spencer, Stratton, S. Townsend, Van Cott, Verplanck, Wakeman, Wales, Weed, and Williams—101.

Mr. MURPHY—I think the resolution is defective in form. It does not provide for this report being made by the Committee of the Whole to the Convention. I think it would be advisable to amend this resolution, to provide that a report be made at one o'clock. The object of my rising was to ask the gentleman from Westchester [Mr. Greeley] to make his resolution for Thursday instead of Wednesday. Nothing will be lost by putting it off a day, or two days. We can take the vote upon any time fixed, and go on with the other business. By adjourning it for one day or two days it will accommodate very much the gentleman from Schenectady [Mr. Paige], who desires to be present on taking the vote in order to present some amendment. I hope the gentleman will consent. The great object of the gentleman, I suppose, is that he may have as full a house as possible.

Mr. GREELEY—When I proposed last week to close this discussion, the gentleman from Schenectady [Mr. Paige], appealed to me not to make it Tuesday, because he could not be here Tuesday, and as he then suggested, he thought he might be here Wednesday. I prepared this resolution with express reference to his convenience as stated to me at the time. Now, it seems to me if we should commence now voting upon amendments—there will probably be thirty or forty—it will take us all day Wednesday to get through, so on Thursday, we may get to a vote on the main question. I submit to the Convention, if the Convention desires it put off another day, I propose Wednesday one o'clock as the time. I apprehend the Committee of the Whole will adapt its action in accordance with the vote of the Convention. I have no doubt it will do so. If we desire to have this vote taken at one o'clock. I am quite sure the Committee of the Whole will adapt its action to that fact. I shall submit to the Convention and I desire that the Convention should decide and not me.

Mr. MURPHY—The gentleman from Schenectady [Mr. Paige] is one of the Board of Trustees of Union College which holds its exercises to-day and to-morrow. It is very necessary that he should be there, and I suppose when he intimated to the gentleman from Westchester that he would require to be absent on Tuesday and hoped to be here on Wednesday, it did not occur to him that those exercises would occupy two days. I submit that matter, however, to the Convention and move, in order to take its sense, to amend the resolution by striking out the word "Wednesday" and inserting in lieu thereof the word "Thursday."

Mr. E. A. BROWN—There are other gentle-

Mr. FIELD presented the memorial of S. L. Terpening, and fifty others, in favor of a constitutional prohibition of the sale of intoxicating drinks as a beverage.

Which was referred to the Committee on Adulterated Liquors.

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up other business upon the table. I do not think the whole Convention is called upon to yield its convenience to the convenience of members, or to suit the convenience of these two who choose to go away at this time; and, as it is suggested to me, they are only an hour's ride from here, and they can come down to attend to any particular vote, or to offer any particular amendment they may wish to offer; and it does seem to me that we should press forward in this matter and take the earliest day, consistent with fairness and with getting before the Convention all the amendments proposed to be offered to this article.

Mr. OPDYKE — It seems to me that the honorable gentleman from Ontario [Mr. Folger], overlooks the real objection to inserting the word "Wednesday." I have already said that we are in Committee of the Whole on the report of the Committee on the right of suffrage; we have been engaged almost a week on a single amendment or two amendments excluding all others that members may desire to offer; we may be engaged on those until the time arrives for the committee to report to the Convention, and the offer of an amendment, however important it may be, is confined to five minutes, while a week has been given to probably less important amendments than others that may be offered. It seems to me that it would deprive the Convention of the power of giving that consideration to the amendments that are hereafter to be offered to which they are entitled. If the Convention decides that this debate shall close in committee on Wednesday, and go to the Convention, I shall then move to extend the time from five minutes to twenty minutes for the mover of the amendment, and to give equal time to the replies.

Mr. LEE — I suppose it is accepted that the work of this Convention is to be submitted for the action of the electors of this State next November; but at the rate of progress we have made hitherto we shall not be one-half through the work assigned to us. I have sat here in my place, attentively listening to the remarks of gentlemen, interested and I hope instructed, but I confess, sir, that I am not quite as well prepared to vote to-day on many of the propositions which have been discussed here as I was when they were first announced, and I think, sir, unless some limit is made to our action on the preliminary questions that challenge investigation here, we shall not complete our work in time to submit it to the action of the people next Fall. We have already been some fifty days in consultation, in deliberation and debate, and I would inquire what questions have been settled here. I notice, sir, in looking over my files of papers, that come from different parts of the State, that the people of the State, our constituents, are beginning to inquire whether this Convention has assembled for the purpose of indulging in the exercise simply of debate. My impression is, the idea is gaining ground in the minds of the people that the Convention fails to comprehend the momentous issue to be considered and settled here. If we delay this until Thursday, the probability is it will be Friday or Saturday before the preliminary question, in the first report made by any committee will be finally settled. I hope sir, this Convention will not con-

sent to be a tail to the kite of the trustees of Union College or any other college. I myself should be very much pleased to attend the commencement exercises, but I shall deny myself that privilege. I think it is the duty of each member to bring his business in subordination to the business of the Convention and I hope the amendment of the gentleman from Ontario [Mr. Folger] will prevail.

Mr. RATHBUN — While I would be willing to accommodate any gentleman as far as can be, without inconvenience, I desire to call the attention of the Convention to a few facts which have occurred lately, and they will be able to judge how far a further time should be given to those who are absent or propose to be absent to-morrow. On Saturday this Convention met and we had about fifty-five or seventy members present. And we were here endeavoring to do our duty and yet incompetent to the performance of any duty because so many of the delegates had left the Convention. We were compelled simply to adjourn and that brought us to a meeting yesterday, on Monday, at one o'clock, and we assembled, and reached the number seventy-one again, and the greater part of another day was lost, for the reason that we had an insufficient number of the members of the Convention present here to perform any duty. Now, sir, here are two days and there are sixty-one or seventy men here voting during the two days, ready and anxious to perform their duty and proceed with the business of this Convention, and they were unable to do it, because it was inconvenient for gentlemen to be present, their business having called them away. Now, these sixty-one or seventy members are here to-day and are ready again to proceed with business, and anxious to proceed with it. Now, sir, as their convenience was not consulted on Saturday, and they have been here and compelled to remain here, because they felt their duty demanded their presence, they remained, and there was not a man sat here but what desired to go home, and had occasion to go home, but the convenience and pleasure of going home was held subordinate to the duty which was owing to the people of the State. Sir, shall we forget that these persons who remained and were faithfully in their places, that their comfort, that their desire to progress with the public business, ought to be consulted to some extent, and that it ought not to be postponed, and those held over again another day to accommodate a couple of gentlemen who desire to be at different places. I submit, sir, that it is not the business of one hundred and twenty-five men, appearing here in a public capacity, to postpone the business for which they are assembled to accommodate any one or two men. I submit that we should proceed with this business. We have done nothing, virtually nothing; and there will be nothing done until we can point our finger to some section of the Constitution which we can say has passed, and our labor in regard to it has ended. Sir, I have no desire to take up the time of the Convention, but I desire to ask gentlemen not to forget, that while they are willing to accommodate a few, that the comfort of those who remained at their post, and are ready and willing



men, Mr. President, who are absent. Judge Harris is one of the trustees of that college and is now absent attending the meeting of the trustees, and I understood from Judge Paige that they desired to be present to-morrow. I know there are other gentlemen absent who are desirous of being present when these votes are taken. I, therefore, hope Thursday will be inserted instead of Wednesday.

Mr. OPDYKE — I hope the amendment of the gentleman from Kings [Mr. Murphy] will prevail. I understand there are other amendments yet to be offered to the report of the Committee on Suffrage, and it may be they will not be reached under the rules, and they will come before the Convention. I think all will agree with me that the important amendments should have more than five minutes allowed to them. I desire that this amendment should have time to go to the committee and there to be discussed. I think if we postpone the time until Thursday it will be better and our work will be better done.

Mr. GREELEY — I will accept the amendment.

Mr. A. J. PARKER — I wish to offer an amendment to the resolution which now provides for a discussion of only five minutes on each side to every amendment that shall be offered to an amendment. I do not think that is sufficient to enable the Convention to understand properly the amendment that may be offered. I propose, therefore, that other persons may discuss an amendment on being restricted to five minutes as is the case in regard to persons moving amendments. I propose to amend by inserting after the word "reply" the words, "And any member of the Convention who desires to speak may be heard under a like limitation of five minutes."

Mr. GREELEY — I hope not. That opens an unlimited field of discussion. We may have one hundred speeches on one amendment.

The question was then put on the amendment of Mr. A. J. Parker, and it was declared to be adopted.

Mr. CONGER — I would like to inquire of my associate from Westchester [Mr. Greeley], who proposed this resolution, whether he means that the amendments that are or may be proposed are to be proposed in the Committee of the Whole, or whether he means that they may also be proposed in Convention, though not offered in Committee of the Whole.

Mr. GREELEY — Certainly. It has been decided by the Convention that amendments may be offered in the Convention which have not been offered in the Committee of the Whole. That is settled by the Convention.

Mr. CONGER — I would like to inquire when that was so settled.

The PRESIDENT — On Friday last.

Mr. CONGER — Then it is so definitely settled.

The PRESIDENT — The Chair understands the rule that any amendment may be proposed in the Convention whether proposed in the Committee of the Whole or not.

Mr. LEE — I hope the amendment of the gentleman from Kings [Mr. Murphy] will not prevail.

The PRESIDENT — The amendment has been accepted by the gentleman from Westchester [Mr. Greeley].

Mr. LEE — Is it competent after the action by the Convention for the gentleman to accept the amendment?

The PRESIDENT — If no business has intervened and no action taken on the amendment, the gentleman is at liberty to accept it.

Mr. FOLGER — I move to strike out Thursday and insert Wednesday. The reasons why I offer this amendment are these: the gentleman from Kings [Mr. Murphy] has stated that it would accommodate certain gentlemen who are absent from the Convention. The gentleman from Schenectady [Mr. Paige], and the gentleman from Albany [Mr. Harris], are absent and expect to be absent until Wednesday. If we commence this voting on Thursday next, the yeas and nays will be called on very many amendments, and it is doubtful whether it will be concluded until Friday or Saturday. I know of several members who will be called away on business on Friday next, and I think their convenience should also be consulted. I do not think it is the convenience of a few gentlemen, but I think it is a question of the convenience of the whole Convention which is to be considered. Therefore I move to strike out Thursday and insert Wednesday.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. CHURCH — I understood the President to declare the motion to be carried; as I understood it, it was the other way.

The PRESIDENT — The Chair was in error; the motion was lost.

Mr. FOLGER — I call for the ayes and noes on that question.

Mr. CONGER — I rise to a question of order—that the President of the Convention having declared the motion to be lost, it is not competent for the gentleman from Ontario [Mr. Folger] to move a call for the ayes and noes.

The PRESIDENT — The Chair is of the opinion that it is competent for the gentleman from Ontario [Mr. Folger] to challenge the correctness of the decision of the Chair.

Mr. FOLGER — The reasons given by the gentleman from Kings [Mr. Murphy] for preferring Thursday are that two gentlemen of the Convention are to be absent on Wednesday, and that is the only reason as I understand it. That two gentlemen, the gentleman from Schenectady [Mr. Paige], and the gentleman from Albany [Mr. Harris], are both absent attending at the commencement of Union College. There is no doubt but all of us would be glad to accommodate ourselves to the personal convenience of those gentlemen; but there is also the personal convenience of other gentlemen to be considered. I know of three gentlemen who are to be called away by an important reference, which they cannot control, one the referee and two others the counsel. They are obliged to be absent, and to leave here on Friday to reach the place of trial on Saturday, so here is a majority certainly whose convenience is to be consulted, not to speak of the rest of the Convention who have been staying here listening, not to debates, but to the reading of essays for the last six or ten days; and now we desire to come to an immediate or very speedy determination of this question, that we may take

consideration of the last vote, and upon that I say ayes and noes.

**PRESIDENT**—What vote does the gentleman refer to?

**MERRITT**—The one proposed by the gentleman from Ontario [Mr. Folger].

**GREELEY**—I would inquire whether that not throw the subject over until to-morrow? I must object to it.

**BARKER**—I move that the committee take on the subject to-morrow, and that Wednesday 1 o'clock be inserted in place of 12 o'clock Thursday.

**MERRITT**—Do I understand there was no objection made to my motion?

**PRESIDENT**—The Chair understood no objection was made.

**GRANT**—I hope this amendment will not be adopted. As I understand, there are proposed a number of amendments to this report here, no one of which has had an opportunity of being heard at this Convention, and to-morrow at one o'clock is short a time for that purpose. I am content gentlemen should consider this report any number of hours on either day. I am content we shall have a morning session, a session at one o'clock, and another session at half-seven o'clock, and that we shall so arrange, and I hope that gentleman will not shut out the consideration of amendments that I deem more important than any that have yet been considered, and if we adopt to-morrow at twelve o'clock or one o'clock, we must recollect that we have but little more than a single day to consider upwards of four times the number of amendments that have already been considered during the past week in this Convention. If the time fixed should be Thursday at one o'clock, then we will have but two days, and if we finish the consideration of the report earlier than that, there is another resolution which may be considered in this Convention. I therefore, to give the movers of all amendments a fair opportunity within the short time of twenty minutes to advocate either of these amendments. I hope gentlemen of the Convention will not support this amendment, but allow the vote to be taken on Thursday, in accordance with the original motion of the gentleman from Westchester [Mr. Greeley], as amended by the motion of the gentleman from Richmond [Mr. Brooks].

**Mr. BELL**—It is somewhat amusing to those who have been here on either day of the session the last three weeks, to hear gentlemen who have absented themselves nearly the whole time, come up here and say we have not given consideration enough to this subject. I was hardly able to locate the gentleman, not having seen him for a long time before he arose; why he complains we should give more time to the discussion of this subject. If the gentleman will look back at his files, if he has not heard it personally, he will see that this report was introduced the latter part of June, and it has been before the Convention constantly ever since, to the exclusion of nearly every other business. Now, sir, it is time we should arrive at something. I have been, as an individual, in favor of the largest liberty and the largest latitude possible in debate, and have moved for extra sessions, and arose in my place

day after day to obtain a session of this Convention on the evening of each day, that we might have an opportunity to hear the subject fully discussed, giving gentlemen an opportunity to display their oratory here to their fullest extent. But the time has arrived when we must take some action on these propositions, and I think we should now take the earliest opportunity possible to do so, and I am entirely in favor of to-morrow at 12 o'clock as proposed by the gentleman from Chautauqua [Mr. Barker]. Should we pass this matter over until Tuesday, these gentlemen will leave us without a quorum in all probability on Friday and Saturday, and it will go over till next week, and so on till the next week, and there is no knowing, unless we fix sometime now, when a vote may be had on this proposition. The resolution of the gentleman from Westchester [Mr. Greeley] is sufficiently liberal to afford any gentleman who chooses to get up here and talk five minutes on this question, and certainly the time has arrived when we do not want any more of these two hours or even twenty minute speeches. The time for long speaking in my opinion has passed, and the time for work has arrived, and I hope the Convention are disposed now to take hold of this question and go at it manfully and fairly, and pass on some propositions to submit to the people and finish their labors as soon as they can conveniently.

**Mr. M. I. TOWNSEND**—I understand that the proposition now before the Convention looks to hastening the time of our action. It must be perfectly evident to every gentleman in the Convention who desires progress, that it is impossible to hasten action in this way. We have no previous question, and this question may be discussed indefinitely for at least three weeks: this very question before the Convention, just as long as gentlemen shall see fit to discuss it, it will last. I concur with the gentleman from Jefferson [Mr. Bell] in the object he desires to accomplish, that it is to save time; but we have spent the regular session of two entire days, last week, in the discussion of the way how to do it. It resulted in the ascertainment of the way how not to do it, and this discussion this morning has nothing in the world in its results but the attempt to discover a way how not to do it. In the regular action of our Convention, as I wish to explain my action, I hope to-morrow, we shall reach a point at which we can obtain the previous question, and when a resolution of this kind comes before us, we can act upon it in some way with some limitation, and for the purpose of saving to-day for the discussion upon the subject that we are discussing in Committee of the Whole, I move to lay this resolution on the table.

**Mr. GREELEY** called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

**Mr. FOLGER**—Does that take the whole question with it?

**The PRESIDENT**—The Chair so decided.

The question was put on the motion of Mr. M. I. Townsend, to lay on the table, and was declared lost by the following vote:

**Ayes**—Messrs. Baker, Barnard, Cassidy, Comstock, Conger, Hale, Lapham, Masten, Seymour, Smith, M. I. Townsend, S. Townsend, Young—13.

and anxious to do business, ought not to be overlooked and delayed, and postponement had at their expense.

Mr. VERPLANCK — I do not quite understand the decision of the Chair. The Chair, in the first place, announced that the resolution was lost, and then that the resolution was carried, and then the gentleman called for the ayes and noes.

The PRESIDENT — The Chair rules it is competent for any gentleman to challenge the decision of the Chair by calling for the ayes and noes.

Mr. VERPLANCK — Then I suppose a motion can always be made after the count is taken.

The PRESIDENT — The chair so ruled.

Mr. CONGER — If I had understood that to be the ruling of the Chair, I should not have risen to present the point of order which I did, but I understood the Chair to say the motion was carried.

Mr. CORBETT — I rise to a point of order, that it is not proper to discuss this question now, unless an appeal be taken from the decision of the Chair.

Mr. CONGER — I do not wish to take an appeal from the decision of the Chair, but for the purpose of establishing no bad precedent I wish to communicate to the Chair the ground on which I raised the point of order, that he had decided and declared that the motion was lost. That being a decision the subsequent call for the ayes and noes is not a challenge of the count. It is an impeachment of the decision of the Chair.

The PRESIDENT — The Chair was erroneous in making the decision. The error arose from the fact of the noise in the chamber and at the left of the Chair, so that the Chair could not understand even the Secretary. The Chair understands it is the province of any member of the Convention to challenge the count without saying directly he challenges the count. He understands that the moving of the ayes and noes is in effect a challenge of the count, no other business having intervened.

Mr. CONGER — Unquestionably. Does the Chair rule that after the President says a motion is lost or carried, that then the call for the yeas and nays is a challenge of the count.

Mr. BROOKS — If the President will allow me. I suppose any man has a right to call for the yeas and nays before.

Mr. AXTELL — No question of order is before the Convention.

Mr. BROOKS — Then I appeal from the decision of the Chair, in order that I may speak to my point of order. I suppose the gentlemen of this Convention may call for the ayes and noes before the Chair announces the result, even after the count has been called, any time up to the announcement of the result. I suppose a call for the ayes and noes is in order, but I suppose it is against the parliamentary practice, after the President of the Convention has announced his decision, for any gentleman after that time to make a call for the ayes and noes. Having stated this much, I withdraw my appeal.

Mr. FOLGER — I understand the President first announced the motion carried and then lost and then I immediately called for the ayes and noes, inasmuch as it appeared there was doubt in regard to the count, and it was uncertain and the proper mode of settling that was by recording the

names as they were called. That was why I called for the ayes and noes and which I suppose were in order. It may be that the gentleman from Richmond [Mr. Brooks] is technically correct in his position that when an announcement is made by the Chair and the time has passed, it is too late to call for the ayes and noes, but there was evidently an uncertainty in the mind of the Chair as to the result. First he decided one way and then another, and then the appeal was made for the ayes and noes.

Mr. WEED — It seems to me there was no uncertainty in the result. The Chair simply misunderstood the Secretary —

Mr. AXTELL — I rise to a point of order. There is no appeal from the decision of the Chair, and discussing the decision of the Chair is out of order.

Mr. WEED — I simply suggest this. If this is to be the ruling, as I understand it, that after a vote has been declared, any one may call for the ayes and noes, I have no objection to it, but it seems to me it comes in the nature of a challenge of the count of the Secretary. The only way to arrive at the question whether the Secretary is right or not, is to call for tellers and appoint them and upon that no one should vote except those voting upon the first vote. The vote was declared by the Secretary, distinctly, 56 noes to 55 ayes. The President misunderstood it. The Secretary announced it right, but the President misunderstood it, and then the President announced the motion was lost, and after that announcement I admit the gentleman from Ontario [Mr. Folger], may challenge the count of the Secretary, but if he does it he must do it in a parliamentary way, and then tellers must be appointed, and none can vote but those who voted before.

Mr. CHURCH — I hope the Convention will acquiesce in the call for the ayes and noes in this case, but for the future government of the Convention the proper way is, we should have a correct rule at this time. I understand the parliamentary rule to be that, after the President has declared upon the count, and the question is carried or lost, it is too late then either to challenge the count or call for the ayes and noes. The count that is to be challenged and which is allowed to be challenged, is the count as announced by the Secretary of the Convention. It is too late to challenge that count after the President has adjudged upon it and declared it one way or the other, as I understand the parliamentary rule. But as there was some misapprehension about it, I trust the Convention will acquiesce in it and take the ayes and noes.

The PRESIDENT — The Chair supposes that statement of the rule to be correct.

Mr. DUGANNE — Will a motion now be in order?

The PRESIDENT — The Chair will determine that when he hears it.

Mr. DUGANNE — I move now that, in order to save time, a second count be had.

The question was put on the motion of Mr. Duganne, and it was declared lost.

Mr. MERRITT — In order to test the sense of the Convention as to the time of making this report and commencing action upon it, I move a

reconsideration of the last vote, and upon that I call the ayes and noes.

The PRESIDENT — What vote does the gentleman refer to?

Mr. MERRITT — The one proposed by the gentleman from Ontario [Mr. Folger].

Mr. GREELEY — I would inquire whether that would not throw the subject over until to-morrow? If so, I must object to it.

Mr. BARKER — I move that the committee take a vote on the subject to-morrow, and that Wednesday at 1 o'clock be inserted in place of 12 o'clock on Thursday.

Mr. MERRITT — Do I understand there was objection made to my motion?

The PRESIDENT — The Chair understood there was objection made.

Mr. GRANT — I hope this amendment will not prevail. As I understand, there are proposed a number of amendments to this report here, no one of which has had an opportunity of being heard in this Convention, and to-morrow at one o'clock is too short a time for that purpose. I am content that gentlemen should consider this report any number of hours on either day. I am content we shall have a morning session, a session at four o'clock, and another session at half-past seven o'clock, and that we shall so continue, and I hope that gentleman will not shut out the consideration of amendments that I deem more important than any that have yet been considered, and if we adopt to-morrow at twelve o'clock or one o'clock, we must recollect that we have but little more than a single day to consider perhaps four times the number of amendments that have already been considered during the past week in this Convention. If the time fixed should be Thursday at one o'clock, then we will have but two days, and if we finish the consideration of this report earlier than that, there is another report which may be considered in this Convention, and therefore, to give the movers of all amendments a fair opportunity within the short time of twenty minutes to advocate either of these amendments. I hope gentlemen of the Convention will not support this amendment, but allow the vote to be taken on Thursday, in accordance with the original motion of the gentleman from Westchester [Mr. Greeley], as amended by the motion of the gentleman from Richmond [Mr. Brooks].

Mr. BELL — It is somewhat amusing to those who have been here on either day of the session for the last three weeks, to hear gentlemen who have absented themselves nearly the whole time, come up here and say we have not given consideration enough to this subject. I was hardly able to locate the gentleman, not having seen his face for a long time before he arose; why he complains we should give more time to the discussion of this subject. If the gentleman will look back at his files, if he has not heard it personally, he will see that this report was introduced the latter part of June, and it has been before the Convention constantly ever since, to the exclusion of nearly every other business. Now, sir, it is time we should arrive at something. I have been, as an individual, in favor of the largest liberty and the largest latitude possible in debate, and have moved for extra sessions, and arose in my place

day after day to obtain a session of this Convention on the evening of each day, that we might have an opportunity to hear the subject fully discussed, giving gentlemen an opportunity to display their oratory here to their fullest extent. But the time has arrived when we must take some action on these propositions, and I think we should now take the earliest opportunity possible to do so, and I am entirely in favor of to-morrow at 12 o'clock as proposed by the gentleman from Chautauqua [Mr. Barker]. Should we pass this matter over until Tuesday, these gentlemen will leave us without a quorum in all probability on Friday and Saturday, and it will go over till next week, and so on till the next week, and there is no knowing, unless we fix sometime now, when a vote may be had on this proposition. The resolution of the gentleman from Westchester [Mr. Greeley] is sufficiently liberal to afford any gentleman who chooses to get up here and talk five minutes on this question, and certainly the time has arrived when we do not want any more of these two hours or even twenty minute speeches. The time for long speaking in my opinion has passed, and the time for work has arrived, and I hope the Convention are disposed now to take hold of this question and go at it manfully and fairly, and pass on some propositions to submit to the people and finish their labors as soon as they can conveniently.

Mr. M. I. TOWNSEND — I understand that the proposition now before the Convention looks to hastening the time of our action. It must be perfectly evident to every gentleman in the Convention who desires progress, that it is impossible to hasten action in this way. We have no previous question, and this question may be discussed indefinitely for at least three weeks; this very question before the Convention, just as long as gentlemen shall see fit to discuss it, it will last. I concur with the gentleman from Jefferson [Mr. Bell] in the object he desires to accomplish, that it is to save time; but we have spent the regular session of two entire days, last week, in the discussion of the way how to do it. It resulted in the ascertainment of the way how not to do it, and this discussion this morning has nothing in the world in its results but the attempt to discover a way how not to do it. In the regular action of our Convention, as I wish to explain my action, I hope to-morrow, we shall reach a point at which we can obtain the previous question, and when a resolution of this kind comes before us, we can act upon it in some way with some limitation, and for the purpose of saving to-day for the discussion upon the subject that we are discussing in Committee of the Whole, I move to lay this resolution on the table.

Mr. GREELEY called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. FOLGER — Does that take the whole question with it?

The PRESIDENT — The Chair so decided.

The question was put on the motion of Mr. M. I. Townsend, to lay on the table, and was declared lost by the following vote:

Ayes — Messrs. Baker, Barnard, Cassidy, Comstock, Conger, Hale, Lapham, Masten, Seymour, Smith, M. I. Townsend, S. Townsend, Young — 13.



*Noes* — Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, Burrill, Carpenter, Case, Champlain, Cheritree, Chesebro, Church, Cochran, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, T. W. Dwight, Eday, Ely, Eudress, Everts, Farnum, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Garvin, Gerry, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hadley, Hammond, Hand, Hardenburgh, Hatch, Hiscock, Hitchcock, Hitchman, Houston, Hutchins, Krum, Landon, Larremore, Law, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Morris, Murphy, Nelson, Opdyke, A. J. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rogers, Root, Roy, Rumsey, A. D. Russell, Schunaker, Seaver, Silvester, Sheldon, Sherman, Spencer, Stratton, Van Cott, Verplanck, Wakeman, Wales, Weed, Wickham, Williams — 114.

Mr. CHESBRO — I would like to inquire whether the motion made by the gentleman from Chautauqua [Mr. Barker], is an amendment to the motion of the gentleman from Westchester [Mr. Greeley].

The PRESIDENT — It is.

Mr. SKYMOUR — A good deal of time has been occupied to day which would otherwise have been spent profitably in the committee, and there is a disposition to discuss some further proposition upon amendments which may be proposed, and I think that the time limited to twelve o'clock, will not give the time which is desirable. I therefore move three o'clock, for the purpose of giving the whole day to-morrow, that the committee may be in session, to this subject, and then when the committee shall rise and report to the Convention the report with the amendments which will be ready for consideration on Thursday.

Mr. LOEW — I think that it is about time that an end was put to this discussion. For more than two weeks we have listened to lengthy speeches on the suffrage question, and if the debate be continued for two weeks more, I do not think we will be any better able to decide the matter than we are at present. Every member of this Convention has doubtless made up his mind how he is going to vote, and I do not think that anything that can be said by any one will cause him to change it. Nor do I believe that any one who yet proposes to speak, has the remotest idea that any speech he may make, however able or eloquent it may be, will in the slightest degree affect the final result. Sir, the people are beginning to find fault. They have sent us here to do a great work, that of revising the fundamental law of the State, and, although we have been in session some six or seven weeks, we have not yet agreed on the first section. If we keep on at this rate, we will not get through during the present year. Sir, I for one am in favor of bringing this discussion to a close as speedily as possible; but inasmuch as several members desire to offer some very important amendments, I move as an amendment that we take final action on the report, to-morrow evening at 7 1-2 o'clock.

The PRESIDENT — The chair will inform the gentleman from New York [Mr. Loew], that two amendments are pending.

Mr. LOEW — That has been accepted.

The PRESIDENT — The Chair does not understand the gentleman to accept the amendment.

Mr. BARKER — I do accept the amendment of the gentleman from Rensselaer [Mr. M. I. Townsend].

Mr. LOEW — I move to-morrow evening at half-past seven, in place of three o'clock.

Mr. BARKER — I accept that.

Mr. WELD — Do I understand now that the latter portion of the resolution of the gentleman from Westchester [Mr. Greeley] is still in this resolution?

The PRESIDENT — The Chair understands it makes one resolution.

The question was put on the amendment offered by Mr. Barker, and was declared carried.

Mr. A. J. PARKER — The time is now short during which these questions will be discussed in Committee of the Whole. The objection that was made to my amendment before, was that there might be an indefinite number of members that would avail themselves of the opportunity of speaking five minutes on each amendment. I propose, therefore, to limit it to two, inasmuch as all the amendments cannot now properly be discussed in the Committee of the Whole; there will not be time enough; it will be necessary that there should be some discussion of the questions, on the report being made when these amendments are offered, and I think it too much restriction to say one shall be heard for and one against each amendment, and he be limited to five minutes. I propose, therefore, to insert after the word "reply:" "And two members may be heard for and against each amendment, but no member shall be heard more than five minutes in such debate."

The question was then put on the motion of Mr. Parker, which was declared carried.

The question then recurred upon the original resolution, and it was declared adopted.

Mr. McDONALD called for the consideration of the resolution amending the rules, offered by him on Saturday.

The SECRETARY proceeded to read the resolution:

*Resolved*, That this Convention will go each day into Committee of the Whole on any general or special order pending, one hour after it convenes, unless that order of business is reached before that time.

Mr. McDONALD — The object, I think, is very easily seen, simply to get at the real business of the Convention within an hour after we meet, and not spend more than an hour in discussion with regard to the order of other matters. It is a rule adopted in both Houses of Congress. They have what they call a morning hour, and then they proceed, if there is any special order pending, and immediately go into Committee of the Whole one hour after the hour of meeting.

Mr. DUGANNE — I offer a resolution as an amendment to that.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That on and after Tuesday, July 30,

the Convention will meet at 10 o'clock, A. M., and that it shall be its regular order of business to resolve into Committee of the Whole on any pending subject at 11 o'clock A. M., each day.

Mr. VERPLANCK — We have so little time left for the discussion of the important report of the Committee on Suffrage, that I ask whether it is best to take up and discuss these matters, which can be heard just as well any other day. We have agreed to come out of committee to-morrow at half-past seven. Therefore, not knowing the course I should take on this resolution, without intending any disrespect to the mover of it, I move that this whole subject do lie on the table.

The question was then put on the motion of Mr. Verplanck.

Which was declared carried.

Mr. HALE called for the consideration of the resolution heretofore offered by him providing for the appointment of a committee of seven to consider upon and report upon the mode of submission to the people, of the amendments to the Constitution that may be prepared by the Convention.

Mr. VERPLANCK — This is a resolution which will give rise to debate and I hope the Convention will be allowed to go into Committee of the Whole, and I move that this resolution lie on the table.

The question was put on the motion of Mr. Verplanck, which was declared carried.

Mr. CHAMPLAIN moved to recommit the report of the Committee on Suffrage, with instructions to amend by striking out section three and inserting the following:

"SECTION 3. Laws shall be made for ascertaining, when the citizen offers his vote at the election, by proper proofs, whether he is entitled to the right of suffrage hereby established."

The PRESIDENT — The Chair does not deem this motion admissible at this time.

Mr. GREELEY — I move that this resolution do lie on the table.

Mr. SHERMAN — I rise to a point of order, that the subject of the report of the Committee on Suffrage is not now before the Convention, and this resolution is not in order at this time.

The PRESIDENT — The Chair decides the point of order is well taken.

Mr. CHAMPLAIN — I move, sir, that the resolution lie on the table.

The resolution was laid on the table.

Mr. HADLEY — I move that all unfinished orders lie on the table.

The PRESIDENT — The Chair holds that motion is not admissible.

Mr. HADLEY — Then I move to lay the present order of business—being resolutions—on the table.

The question was put on the motion of Mr. Hadley, and it was declared carried.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the chair.

The CHAIRMAN announced the question to be on the amendment of the gentleman from Richmond [Mr. Curtis] to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

Mr. SMITH — May I ask of the Chair if that amendment of the gentleman from Richmond [Mr.

Curtis], was not acted on and disposed of last evening.

The CHAIRMAN — The Chair will inform the gentleman from Fulton [Mr. Smith], that it having appeared there was no quorum, that vote goes for nothing.

Mr. FRANCIS — The gentleman from Albany [Mr. Cassidy], in this discussion yesterday, announced himself in favor of submitting to the people as a separate constitutional proposition, the question of female suffrage. But he declined to say whether he was in favor of or opposed to the measure—he would simply submit the question to the people, and no farther did he or would he commit himself. But upon the question of abolishing the property qualification upon the suffrage of colored citizens, the gentleman urges a separate submission, and as I understand him, sustains the "Constitution as it is"—in other words, he would make the possession of property to the value of two hundred and fifty dollars, the test of a black man's manhood. Now, I disagree with my friend from Albany in both his positions. I would, sir, put nothing in the Constitution that I am not willing to support here and elsewhere, nor would I submit propositions to the people separately that I am opposed to directly. We came here, sir, to make such amendments of the Constitution as, in our opinion, will improve the fundamental law, promote substantial reform, and advance the best interests of the State. Why go beyond this line of duty, or, rather, outside of it, and make separate submission of questions that embody principles we are unwilling to support distinctly and unequivocally here? This, sir, it seems to me, would be a shirking of duty and responsibility. We were not sent here to ask the opinion of others, but to submit our own—not in fragments either, but as a symmetrical whole. Why submit the female suffrage question to the people separately? "To obtain the popular expression distinctly upon it," I am answered. Then why not make a separate submission of other questions as well—all other questions of proposed constitutional amendment? There is the question already suggested here of investing with the right of suffrage male citizens who have attained the age of eighteen years. At that age military duty is exacted of them, and it is claimed that they should have the right to vote. Why not have this question also separately submitted to the popular vote? Then, again, numbers of citizens—quite as many I think (though they may not be so outspoken) as favor female suffrage—believe that the property qualification, such as is now imposed upon colored voters, ought to be made general. I do not, sir, sanction the principle as applied to any class of voters; yet, as it has its supporters, why not submit the property test to the people for a distinct vote thereon? Why thus submit female suffrage when opposed to it, or non-committal on the question as the gentleman from Albany is, and refuse a like submission of property qualification for white voters as well as black? The advantage of this latter proposition would be uniformity and equality. It would be the

consistent carrying out of the rule—"What is sauce for the goose is sauce for the gander." For myself, sir, I do not accept the sauce at all, nor do I propose to offer it to others, either as a dish by itself or commingled with the rest as one. That is to say, I cannot for one consent to present constitutional propositions to the people to be voted on by them either separately or otherwise, that are opposed to my own conscientious convictions, and which my judgment condemns as wrong. No one here would think of submitting to the popular vote the question whether the Legislature should or should not be required to pass laws restoring imprisonment for debt, establishing the stocks and whipping-post, and requiring the flogging of the person with cat-o'-nine-tails for even small crimes, as in the "good old days" of which some gentlemen speak so reverently, and which are so often referred to as furnishing infallible precedents for our guide in governmental affairs for ever more. And why not submit this question to the people as well as the twin relic of barbarism born of African slavery, and a disgrace to our day and age,—namely, the property qualification for colored voters?—a class proscription, a recognition of the doctrine that, not worth in manhood, but \$250 worth of property makes the colored man fit to vote, and the want of it the fellow of an inferior race whom it would be dangerous to incorporate in our body politic, as introducing an element of political demoralization in our system of government, and as menacing society with the evils of miscegenation and all the horrors of social equality of blacks with whites! When my friend and colleague from Rensselaer [Mr. Seymour] suggested this idea of social equality as the possible if not probable result of manhood suffrage, the thought occurred to me whether the little barrier of two hundred and fifty dollars was all that now protects the integrity of our social system, and whether we had not reason to fear and tremble from the increasing number of black men who are acquiring the requisite freehold that enables them to vote, and so advance to social equality among us? Why, sir, a full score or more of these \$250 black men cast their ballots for the gentleman himself in our city [Troy] to increase his flattering home vote as candidate for delegate at large to this Convention; and in view of the fact, I asked myself, is it possible my friend recognized these colored constituents as his social equals, or is he concerned lest their presence and vote at the polls may have contaminated society? No, no, Mr. Chairman, all the fine discourses we have listened to here on this subject—all the historical precedents and existing policies of other nations set forth in language so polished, and with adroitness so keen, by the gentleman from Albany [Mr. Cassidy], does not change or modify the practical question before us. We have black men among us, and we know what they are. We know they are just as well qualified to vote as other classes who enjoy that inestimable privilege; we know that \$250 worth of property adds to their qualifications no more than it adds to the qualifications of white citizens; that it is no more a certificate of man-

hood for the one class than for the other. The just rule which the enlightenment of the age, the logic of events, the spirit of our regenerated republic, and the teachings of the best minds of the world enforce, is this: Equality before the law; equal privileges to all citizens at the ballot-box—or, as Jefferson expresses it: "Equal and exact justice to all, men of whatever state or persuasion, religious or political." Then the question may be asked, Mr. Chairman, why withhold the right of suffrage from women? I answer, because woman has her duties, her sphere of life—wonderful it is and potent in its influences—and man has his in the rougher wrestling with the world and its grosser materialities. Let woman work out her mission in the beauty of holiness, at the sacred family altar and in the refinements of a purified society, and she will then most effectually wield the power that imparts virtue to manhood, integrity to political action, and justice to the administration of government. As I respect woman, as I appreciate her matchless graces, her loving, confiding, beautiful life, so would I protect her from the hurly-burly, the antagonisms and angry turmoils of political contests. We know what these contests are—how much of bitter passion they develop, how ambition moves in ways of trickery, and often downright fraud; how the freedom of speech is abused in the utterance of language we would not have our wives and daughters hear and become familiar with. We know, moreover, that a vast majority of the true and lovable women of the State—the refined, the intelligent and the good—do most earnestly reject this whole theory of so-called "women's rights," and their wish to be let alone should most certainly be respected. Polished in diction, compact and methodical in construction, powerful in logic, beautiful in imagery, keen in satire, and wonderful in oratorical effect, the great speech of the gentleman from Richmond [Mr. Curtis] in favor of extending the right of suffrage to women, still failed to convince me of the desirability or justice of the measure. The ready intuition and quick perceptions of the women themselves discover its impropriety, and their private verdict at home, where their power is, and where their love reigns supreme, is overwhelming against the proposed change that would expose them to the buffetings of the roughest partisanship and contact with the vilest elements of community. I yield to that verdict as in accordance with the laws of nature and the decrees of God, rather than to the powerful persuasions and captivating eloquence of my friend from Richmond. So upon the amendment proposed by him I shall vote No.

Mr. T. W. DWIGHT—In speaking on this question, sir, I have not the advantages of the gentleman from Richmond [Mr. Curtis]. I have had no time to prepare myself with a written argument, and my few and imperfect words must compare but feebly with the beautiful oration which the gentleman delivered before us. But, sir, I hope, subject as I am to this very great disadvantage, that the remarks I may make may not wholly be without truth, that I may be able to say something on this subject which may com-

mond itself to the minds of the gentlemen who may hear me. Now, sir, as I understand the disposition of the majority of the members of this Convention, they are determined on the one hand to concede to negroes the exercise of the elective franchise, and I believe that on the other hand they are of the opinion that the exercise of that franchise should not be conceded to women. They have, therefore, to travel a narrow, but yet, I believe, well-defined path, and it is their duty to show some reason why on the one hand the elective franchise should be conceded to the one and why it should be denied to the other. Now, sir, before going farther on this question, it seems to me proper to restate what I believe to be the true grounds on which the whole theory of the elective franchise rests. I believe it can be shown, as I stated before in another connection, that it rests first on the nature of society, and that society itself is given to us by the will of God; and that, therefore, we have the right to perpetuate the existence of society. But we must not exercise this power or right arbitrarily. It is the duty of statesmanship to exercise the power given to us in some reasonable manner. There are two reasonable grounds upon which we can refuse the elective franchise, one that of personal incapacity, and the other on the ground that the exercise of it—admitting personal capacity—will tend to the injury of the State. Now, sir, I do not choose to rest the refusal of this right to women on the ground of personal incapacity. I believe there are several requisites which on a former occasion I mentioned, and which are, in my judgment, necessary. Intelligence, independence, integrity, interest, and membership or identification with the mass of society. It has been said on this floor that woman does not have the interest that she ought to have in this class of questions. But it does not seem to me that is a serious objection. I believe that interest will come if she is permitted to vote. I believe that many women who would repudiate the franchise and desire not to exercise it will, if it is given to them, feel that they must exercise it. If they are driven to that, if it is given to them by society, it must be exercised. Therefore, I do not feel the pressure of that argument, but what I do feel the pressure of is, I believe it would be injurious to society. Before I go further, I wish to say a word in reference to the position of the honorable gentleman from Richmond [Mr. Curtis]. He said that as each person in society had the right to life, liberty, and the other conceded rights, such person had a natural right to the means of defense of those conceded rights. Therefore, he argued, that such person should have the elective franchise. But, sir, on that point I cannot agree with him. While I would concede that any person may have the right to exercise those means of defense which nature gives him, I do not concede that he has the inherent right to exercise those means of defense that society gives him. Society gives him the elective franchise, but at the same time it gives it to him, it dictates the terms on which it shall be exercised, dictates them reasonably, I admit, but still dictates them by saying they must be exercised in such a way as not to injure the State. We may, for illustration, state in regard to other departments the same thing. We say, for exam-

ple, when a man exercises intellectual powers—than which none are more clearly his own—and produces a book, he has no right to publish that book or ask the aid of society in protecting him from infringement upon that publication, except upon the terms which society imposes. These, in our own country, are that after publishing it for a time exclusively he shall ultimately give up the work to the public. So we might show the same thing by means of other illustrations; but the point which I wish to make is simply this, that man has an inherent right only to the means of defense which nature gives him, but when he calls forth powers and the rights, which society provides, he must take these on the terms upon which society chooses to furnish them, and regulated, as I said, by reason. I now recur to my original position, that if one claims the elective franchise it must be claimed subject to those two great principles, that the person is not incapacitated personally for its exercise, and that such exercise would not cause any public danger. It seems to me that the great champion of this subject, John Stuart Mill, has thrown much unnecessary discredit on those who oppose the concession of the elective franchise to women, by saying that we class them with idiots and lunatics, and, therefore, that our action is derogatory to women. That argument seems to be fallacious, because I do not class them with idiots and lunatics on the ground of incapacity. I take two positions: on the first I exclude persons from the elective franchise on the ground of incapacity, and on the other I exclude them on the ground that the exercise of the franchise might endanger the State. I would place the exclusion of idiots and lunatics in the first class as being personally incapacitated, while I would place a refusal of the exercise of the elective franchise by women on entirely another ground—that of injury to the State. Therefore it is only confusing the mind to say that we place them in the same category, for I put them on entirely different grounds and reasons. What is this whole question of the elective franchise to women? If it were only the vote, if it were only, as the gentleman from Richmond [Mr. Curtis] said, the dropping of a little piece of paper into a box it would be a very harmless thing, but that is not the whole of it. Those who act with the gentleman from Richmond [Mr. Curtis], claim, sir, as we were told on this floor, by Mrs. Stanton and Miss Anthony, that when the elective franchise is given to women they will have other rights; they will have the right to hold office, they will have the right to go into all the employments of life. One of the ladies said here the other day, that if woman had the elective franchise she would force her way into a law school that she named, so that young ladies should be entitled to attend that institution. That is not altogether a new idea, for in the old law school of Bologna there was a certain female professor, and I believe more than one, who lectured to crowds of males, but she took the precaution before lecturing to place a curtain before her face for fear the "benefit of her teachings would be impaired by that more subtle doctrine which Shakespeare tells us is drawn from woman's eyes. I respect that ancient lady,



sir, whose modest figure is somewhat veiled by the dimness of antiquity. Why, sir, if we admit this exercise of the franchise we are substantially told that the ladies shall wrangle at the bar, shout in the auction room, speculate at the Bourse, and be present at the bickerings of the gold room. It is to such an entertainment as this, sir, that we are invited. There will be no door to office so concealed or so jealously guarded upon which there will not be the gentle but peremptory knock of woman, and if there is any demur or hesitation in opening it, we shall hear the quiet but decisive "why not?" so effectively urged by the gentleman from Richmond [Mr. Curtis]. We are asked who is to judge in regard to this, who is to say that woman is to be excluded from the franchise? It is this Convention which is to determine. We are here acting under the delegated power of the people of the State of New York who have the elective franchise. They have conceded the power to us to decide this question, and we are now authorized to pass upon it, not arbitrarily, as I have said, but in the exercise of reason. Now, sir, I come to the true objections to the exercise of the elective franchise by women. I make only two of them: the first one is, that I fear its exercise will cause deterioration of the individual woman; and the second one is, that I fear that it will cause injury to the family. On these points I hesitate, and to hesitate is to refuse. In regard to the deterioration of individual women I have this to say: I am one of those who believe that the Creator has made a distinction, a clear and marked distinction, between the duties of man and woman, and has assigned public duties to the man, and private duties to the woman. I believe in the distinction between the sexes, because I see it in nature, because I have studied it in the child. The distinction between the sexes are more marked as the child advances in years, until full manhood and womanhood are reached, when I seek to study such differences in their perfection. No person has marked this more clearly than the German poet Schiller, and I wish I had the literary ability of the gentleman from Richmond, so that I could turn the verses of Schiller into the melodies of English verse. He describes the distinctions in question by alternate verses. These differ in construction. When he is speaking of woman the verse is all melody; when he is speaking of man the stanzas change, and become rough and harsh, and thus he alternates from one verse to the other. He says, in the translation of another, which but inadequately expresses the vigor and beauty of the original:

Honored be woman, to her it is given  
To twine with our life the bright roses of heaven;  
'Tis her's to be weaving affection's sweet bond;  
Beneath the chaste veil she loves to retire,  
And nourish in silence the holy fire  
That burns in a bosom faithful and fond.

Far beyond truth's simple dwelling  
Man's wild spirit loves to sweep;  
And his heart is ever swelling,  
Tossed on passion's stormy deep.  
To the distant good aspiring,  
There is still no place for him;  
Through the very scars, untiring,  
He pursues his dazzling dream.

But woman's mild glance, like a charm, overtakes him,  
And from his visions of wandering wakes him,  
Warning him back to the present, to flee.  
In the mother's still cot her enjoyment  
Finds she in modest and quiet employment;  
Faithful daughter of nature is she.

Fierce is man's unending strife;—  
He, beneath ambition's goad,  
Madly rushes on through life  
Without rest or fixed abode.  
Now creating—now undoing—  
No repose his wishes know;  
Like the Hydra's heads renewing,  
Still they wither, still they grow.

But woman, contented, enjoys every hour;  
She plucks from each moment that passes, the flower,  
And fondly guards it with tender care;  
Her bounden duties are all her pleasures;  
Richer than man in memory's treasures,  
Roves she through Poesy's endless sphere.

Under man's despotic sway,  
"Might makes right," is still the word;  
Persia's monarch must obey,  
Silenced by the Scythian sword.  
Self conflicting passion wages  
In his breast a hateful war;  
While hoarse discord rules and rages,  
Modesty is seen no more.

But woman, with soft, persuasive power,  
When in her turn, she rules the hour,  
Quenches the fires that burn to destroy;  
Teaches the powers, forever contending,  
In peace and harmony now to be blending—  
Old foes to be mingling in love and joy.

Thus he marks in his verse the inherent and peculiar distinction between man and the woman, as no one could have done but a poet, with the true insight of Schiller. What I fear is, that if the elective franchise is conceded to woman, as well as the ability to hold office and fill all the employments of life, this natural and clear distinction of duties will, in a measure, be overborne. In time, woman might deteriorate, be less perfect, and the progress of civilization be in a measure arrested. I do not exclude woman from the franchise for any reason except my earnest and deep regard for her, and my strong desire to do nothing which will tend to her injury. The fears which I have expressed may not be justified; it is impossible to decide in advance. The experiment may prove successful in some state of society different from our own. The State of New York is, in my opinion, not the place to make the trial of so dangerous an experiment. Rather let it be tried, if it must be, in some remote State of the Union, where there is more simplicity of manner, less luxury, and where a failure would not prove so completely disastrous. Whenever I shall clearly see that the exercise of the franchise does not injuriously affect female character, I shall no longer oppose it on this ground. But at present my better judgment is adverse to the concession. I would like to dwell upon this question more at length, but I am admonished that my time is rapidly passing, and I must proceed to the next point, injury to the family. I wish to say a word in regard to the original institution of the family, and in its relation to society. That subject has been very thoroughly studied and examined by a recent writer, Dr. Maine, who has written a well-known work which has placed him high among the philosophers and students of ancient law. He has shown us in that masterly work

the origin of society. He has treated the subject historically, and shows that the origin of society depends upon the aggregations of families; that the family was the unit in ancient society, as the individual is the unit in society to-day, that from families the aggregation finally came to tribes and from tribes to nations. That each one of those families was a corporation in itself. So that the intercourse between ancient families was like the intercourse between corporations and little sovereignties. As society was in that condition the father had absolute power over the children, the husband had absolute power over the wife, for the reason that the wife was considered, under the ancient law, as a daughter of the family and therefore the father [paterfamilias] had control not only over the children but over the wife. But by a fiction of the Roman law it came to be established that the wife was not to be regarded truly as a wife, she was simply "deposited" by or as we say there was a bailment by the relatives of the wife to the husband, the consequence of which was that the husband lost his control over the wife and it remained with her relatives, who practically did not exercise it. Under the later Roman laws she thus became absolutely independent. While affairs were in that condition and the wife had thus become emancipated from the husband by a fiction of the Roman law, christianity came. What did christianity seek to do? Paying no attention to the mere physical control which the husband anciently had over the wife, it sought to reinstate the moral control of the marriage relation. We find therefore the teachings of christianity in direct opposition to the independence which the wife gained by the Roman law prevailing at the time in which christianity came into the earth, and therefore it would be, this author tells us, in direct opposition to this spirit of christianity that we should give the woman absolute personal freedom. Let me read a passage from this author, and I have but to say that no writer stands higher as authority on this subject than he, for no man has studied ancient law more thoroughly and more in the spirit of philosophy.

"No society which preserves any tincture of christian institution is likely to restore to married women the personal liberty conferred on them by the middle Roman law."

After christianity had thus laid down its principles, the canon law came. In the course of the progress of the church, canon law took up this subject of the rights of married women. What did it do? It established the disabilities of married women to hold property. That is derived from the church law, from the canon law. The advocates of the rights of married women endeavor to confuse these two points and say that because you gave married women proprietary rights, therefore you must necessarily make them absolutely free. But there is a clear difference between the two cases. This author goes on to say:

"But the proprietary disabilities of married females stand on quite a different basis from their personal incapacities, and it is by the tendency of their doctrines to keep alive and consolidate the former, that the expositors of the canon law have deeply injured civilization."

We may remove these proprietary disabilities, as has been done in New York and elsewhere; we may heal the wound which civilization has sustained by reason of the denial to married women of the rights to hold their property separate and apart from that of their husbands, and yet inflexibly maintain the public official incapacities of woman. It is the family as organized by christianity which I seek to uphold. I have no low idea of the inferiority of woman to man. I assert her equality, and, in some respects her superiority. I must insist, however, that she is inherently and essentially different. Her part in the family is allotted to her by reason of an irreversible law. The old society has gone with its artificial arrangements, its family sovereignties, its corporate fictions, but in the modern family lies hidden, as truly as in the ancient, the germ of the State. By it are trained the citizens who sustain society; without its reproductive power social life would be feeble, if not extinct. The part which woman sustains in it is vital; the functions which she fulfils cannot be carried on by man. I have no time to argue this point; scarcely a moment in which to state it. I fear that the suffrage and its accompaniments would take away woman from her noble and necessary duties in the family; if it would not do that, that her interest would be divided or lessened, her power as the great educator in the family would be diminished if not gone. Such a result would be deprecated not only by the philanthropists, but by the statesmen. It may be that this result would not follow; to a certain extent the effect of suffrage is a matter of conjecture. The consequences which I have depicted are, however, possible and natural; they would be expected in the ordinary course of events. It would be of no advantage to open to woman the avenues to office and general employments unless she sought to use them; and in that case experience teaches us that her refinement, delicacy and modesty would suffer, and an undivided attention to family affairs could not be maintained. I am aware that many women of intellect murmur at the monotony of life in the family. Its sameness begets weariness and perhaps inspires disgust. They, as well as we, long for the excitements of the rostrum and for a place in the public councils. They regard their life as worthless, because it is unpretending and quiet; they cannot bear to sustain "the sacred primal sorrow of their sex." To such as these I commend the beautiful fable of Jean Paul, who tells us that the leaves once boasted over the blossoms, because while the latter fell in the early spring time, they remained growing thicker and stronger, till at the end of the summer they were swept away by the storm. But the answer of the blossoms was we remained till our work was done; without us there had been no fruits, which it was only your functions to shade and support. As the leaves have no cause to boast over the blossoms, so man has no cause to boast over the woman; each has a distinct and glorious work to do, and in the name of society and christianity let them do it, with gladness and singleness of heart. I have spoken in this connection only of married women. The argument,

however, includes unmarried, as it would be impossible in practice to draw a distinction between them, as nearly all are destined at some time to have control or influence in the family. It may be said that after all, woman, though she has the suffrage, may not hold office and fill general employments, and that all these fears are unfounded. The answer is that they probably will, and that the *tendency* of the suffrage is in that direction. There would be no call for it except on that ground, and all its advocates in this country, as far as I know, connect with the demand for suffrage the claim to hold office and the like. The friends of female suffrage claim it on these grounds: that the denial of it is degrading; that its possession would educate women in political duties and thus make them more worthy companions of intelligent men; that the ballot would protect woman in her person and property; that taxation and representation should go together, and that she would thus be secured better wages, as well as opportunities for employment. They also insist that her presence at the elections would be of use to the State in the improvement of the laws. In regard to the first of these claims, I have already made some remarks. There is no degradation because the objects for which the exclusion is made is protection to woman and the State. In respect to the second, I admit that it has force. It were well that women were acquainted with political affairs. In this way she could exercise a most effective influence without the ballot. It may, perhaps, be doubted whether the mere gift of the suffrage has much effect in that direction. Political education depends on other causes. But giving its fullest force to the argument, I would not sacrifice other and more positive advantages to gain this single good. I would not produce an evil effect upon society in order to educate women in political affairs. To the claim that the ballot would protect woman in her person and property, I reply that it is not needed here for that purpose. I marvel when I read John Stuart Mill's argument in the House of Commons to perceive that he advocates the ballots to protect women from the personal abuse of brutal husbands. I unhesitatingly assert that it cannot be asked for here on any such ground. I know not how, if woman made all the laws, she could protect herself any more fully than she is guarded at present. The Legislature are swift to grant her proprietary rights in the most full and ample manner. Not a year passes without some advance in that direction. I shrewdly suspect that if the women had the power, they would relieve us from some of the "disabilities" under which we now labor. But the women want a guaranty that these privileges shall continue. They can have no better guaranty than the advancing civilization of the day, which makes a retrograde step impossible. Without this, with a society returning toward barbarism, the ballot in woman's hands would be no protection. But it is said that taxation and representation should go together, and if a woman is taxed she ought to vote. This is but a futile argument. It is instantly refuted by asking, Why? All the passive persons in society may own property, but that does not give them the right to vote. The question still recurs, is there any good reason for the exclusion from the suffrage, and the question of property has nothing to do with the exercise of the franchise. If it depended upon that, life would be subordinate "to meat, and the body to raiment." No person who claims the suffrage need ever rest his claims on the ground of the payment of taxes. Such payment may tend to show that he has one or more of the qualifications of a voter, such as interest in society, or identification with it, but nothing more. He may be taxed, and still be properly excluded, if the other grounds of suffrage are absent. This notion of the connection between taxation and representation is a bequest of the middle ages, and does not belong to the American system, which puts the suffrage upon permanent grounds of reason, and not on those which are fluctuating and arbitrary. Finally, woman wants the ballot to give her occupation and remunerative wages. I mourn that her avenues to employment are so few, and the wages are so unremunerative. But can this evil be remedied by legislation? Will not wages and employment follow the great law of supply and demand? The true friends of woman are those who invite her to a larger and broader style of education; who ask her to submit to the training and self-sacrifice necessary to fit her for high employment. The way to eminence is a thorny road, alike for men and women, and although it is unjust and illiberal to exclude her from many employments which she might worthily fill, yet it is true that remunerative occupations are quite abundant for those who possess a high degree of skill. The great difficulty at the present moment is the superabundance of unskilled labor, which of necessity commands a low price. This price does not depend on the fact that the employee is a woman, but rather on the ground that the labor market is overstocked by persons of a low degree of skill. Women who are eminent in song or tragedy, or literary composition, are most liberally paid. Women who are untrained and unskilled, cannot evade the inexorable law, that in the long run a commodity will sell for no more than it is worth. If they are permitted to compete with men in all the employments of life, the laws of trade and commerce would demand that they must submit to the same training as men, and attain the same mechanical excellence to command the same wages. Why not submit to that training now? It may be said that many cannot do that? But would the ballot change the matter. I believe not. We are beginning to expect too much of the suffrage and of legislation, and in time we shall be undeceived. If the disposition could be generally aroused in the female mind to submit to the necessary labor, trade itself would demand that her skill should not remain unemployed. I, however, hope that public opinion will force men to abandon some occupations for which they are unfitted, and to which women are specially adapted. Finally, the suffrage is claimed on the general ground that the participation of women in public affairs would be advantageous to the State. This again is purely matter of conjecture. I should think such a result quite doubtful. It would appear to me that with her more impulsive nature there would be less steadiness of movement in

the government, and frequent and violent changes of policy. Politics, I apprehend, would tend to the impracticable, and as it is eminently a practical science, and often depends upon a balancing of probabilities, I fear that it would retrograde rather than advance. All this might happen with the utmost good intention on the part of the female voters. It is possible that there would be more purity of administration, but that is not clear; for, in many instances, the artful, scheming and unprincipled would hold the reins of power. It is said that queens often rule well, but this remark is not quite satisfactory, as in some, if not all, of the instances named, other influences have had a controlling effect on the administration of the government. On the whole, I do not see sufficient reasons why the existing order of things should be disturbed, and women admitted to the elective franchise. I only regret that the brief period allowed to me prevents a more extended discussion of the subject.

Mr. DALY—Mr. Chairman, I have a few observations to make upon this particular branch of the subject, and my remarks will be chiefly confined to the argument of the eloquent gentleman from Richmond [Mr. Curtis], for the reason that I was not present yesterday or yesterday evening during the continuance of the debate. The gentleman from Richmond [Mr. Curtis], as I understood him, did not claim that suffrage was a natural right. But assuming it to be a political privilege, he insists that women are entitled to the free exercise of it, because upon them are imposed the duties of government. "I deny," he said, "that those who have the suffrage have the right to exclude woman from that power and influence which she would exercise by the use of it for her own protection. "When," he asks, "was it established or ordained that man was to be the representative of woman in government? When was that choice made?" I answer, it was made by her Creator when He established the natural distinction which exists between the two sexes. It was made when that act took place which is recorded in these words in the sacred volume: "And the rib which the Lord God had taken from man, made he a woman and brought her unto the man;" and if the gentleman should not, like some of the advocates of this doctrine, attach much weight to this passage in Genesis, then I answer it has been ordained, with a few rude exceptions, by the practice hitherto of all mankind, of all nations great or small, of all religions, christian or pagan, of all societies, savage or civilized, which is the highest evidence of an ordained and universal law that can be addressed to the human reason. The gentleman says that because a thing has existed hitherto, that is no reason why it should continue to exist. This may be very true. Mr. Chairman, with regard to the peculiar laws, usages, or customs of any one particular people, but when he asks us to change a universal law that has prevailed in all quarters of the globe, and so far as we know, from the beginning of society, the reasons must be irresistible which warrant such a change, and I propose briefly to consider those which he has presented. His first and general reason is that government is maintained over

woman without her known or expressed consent, as she has no participation in it; and he refers to the fallacious maxim in the Declaration of Independence, that "all governments derive their just powers from the consent of the governed." I have one answer to this objection. The gentleman and myself were among those who agreed in the beginning that the government of the United States was justified in putting down the rebellion, and we lent our best efforts to the accomplishment of that work. If this fallacious maxim of the Declaration of Independence is true, in what position does he and I stand? Did not the Southern States, by the exercise of the franchise and through representative conventions, every one of them, vote themselves out of the Union? Relying on this doctrine, that the just powers of government are derived from the consent of the governed, did they not deliberately repudiate the government of the United States and establish a government for themselves and with a unanimity unexampled in the history of civil war did they not wage a bloody struggle for four years to maintain it. What was our answer to their doctrine? That government when once established is an integral thing, no part of which can be severed unless by successful revolution, and that if they had the right to attempt that, we had an equal right to prevent it. I cite this, the most memorable instance of modern times, to show that government may be rightfully and justly maintained without the consent of those who are governed. The gentleman says that suffrage is necessary for woman's security and protection. I answer that she has a security and protection in the tenderness which the father feels for the daughter, in the affection which the husband bears toward the woman he has selected for his companion in life, and in that deep-seated feeling which every man, who is a man, feels for the mother who bore him. She has in this a security higher than all human laws. Her interests, be she daughter, wife or mother, are so inseparably interwoven with that of man's, that in guarding her interests he but guards his own. The gentleman tells us that it is a mere assumption, that the interest and affection of men in women will lead them to legislate wisely and justly for women. It is, he says, the old appeal in favor of power, this dependence upon the affections of man toward woman. It is old, sir, very old, as old as human nature, and will continue in all future time, unless human nature is changed. The gentleman is a poet, and I will take the liberty of quoting the utterance of the greatest of living poets, Tennyson, on that subject:

"The woman's cause is man's, they rise or sink  
Together, dwarfed or god-like, bond or free,  
Not like to like, but like in difference.  
Yet in the long years liker must they grow;  
He gains in sweetness and in moral height,  
She mental breadth, nor fail in childward care,  
Nor lose the child-like in the larger mind,  
Till at the last she eat herself to man,  
Like perfect music unto noble words."

The gentleman tells us, Mr. Chairman, that men are not pure enough to govern women and that they are not governed rightfully. Of what do they complain? Have they not, at least in this State, as respects property, all that men have? Are they not man's social equal? If to the man is allotted, as



more appropriate to his nature, the important duties that are connected with the management of the State, and the defense of it when in peril, to woman is confided the no less important duties that are connected with the development of the family. God has made them co-equal, Mr. Chairman, but he has made them different; different physically and intellectually. I say intellectually, for women have not been prominent in the higher achievements of the human intellect. No great discovery in the natural sciences ever has been made by woman; there have been no female Galileos, Keplers or Newtons. They have reached some distinction in the imitative arts and as musicians, but no woman has been a great musical composer, or a distinguished mathematician, and I am informed by a gentleman of the Convention that no woman's name is found to be recorded in the patent office as an inventor. This does not argue that she is inferior, but that she is different, for in other intellectual qualities and in her high moral purity she is superior to man. She is more acute. Her power lies not in deliberation, but in instantaneous perception. God has given her for her defense an intuitive knowledge of character, and she has a natural talent for intrigue. She is man's master in the knowledge of all the arts by which power and influence are exercised over him, while she is herself, at the same time, the slave of her affections. She differs from man physically because there are many avocations to which man is adapted from his coarser and stronger nature and for which women are unfitted by reason of their more delicate organization. The gentleman speaks of this doctrine of the exclusion of woman as a remnant of the middle ages. It is, sir. And allow me to say that it is to the feudal ages that we are especially indebted for the causes that led to the elevation of woman. To the home feeling engendered in the feudal castle, to the romantic institutions of chivalry, to the sentiments that prevailed in respect to woman's purity and chastity, and to the spiritualizing influence of christianity, we owe it that women were raised in the middle ages to a rank they had never occupied among the most advanced nations of antiquity. If we want to know what the condition of woman was in antiquity, we have only to look at the customs of the refined Athenians, of loaning their wives for short periods to their friends, as an act of friendship, and if, under the Roman Empire, we desire to know the position of woman, we may read it in the prurient pages of Juvenal, which invokes our astonishment that human society could have existed in such a state of festering corruption. The Saxons, a rude and coarse people, admitted women to a full participation in political privileges, and they sat with men in the general national council or wittenagemote. The more refined, and cultivated Normans restored woman to her true position—the real sphere of her influence—which she has since continued to occupy, as the co-worker and companion of man, in the advancement and civilization of the race. The gentleman says: "Should not a refined and cultivated woman be entitled to vote as well as the low political classes that now exercise the suffrage?" I ask, Mr. Chairman, are there no low classes of women? To admit women to vote would widen the area of the

suffrage; but it would not change very materially the moral elements of which it is composed. As my time is short, I will hurry to a last observation, which to my mind is conclusive on this subject, and that is that the women of this State do not want this change, and I submit this proof of it. Miss Anthony, in an official report, made recently to a convention assembled at Brooklyn, laments that so little interest was taken in the subject that she could not get "more than six live women and men"—I use her own language—to interest themselves in the movement to influence this Convention. If that is the result of her labors, with her talents and those of her associates, we may infer that the women of this State have too much good sense and too thorough an appreciation of their true position and present influence to desire to plunge into politics with its publicity, passions and corrupting influences. I claim the attention of the committee for one minute longer upon another subject; simply to correct some matters of fact in respect to the pauper vote of New York. It will be remembered that the gentleman from Reusselaer [Mr. M. I. Townsend] computed the pauper vote of the city of New York to be fifteen thousand annually, including those who are inmates of the almshouse and those who receive out-door relief. These, Mr. Chairman, are the facts. I take them from the last year's report of the Commissioners of Charities and Corrections, I select from the report the monthly statement ending on Oct. 6, 1866, that being the nearest month to the election in that year. There were on that day in the almshouse of the city of New York 554 men, 501 women, 67 girls and 75 boys, making in all 1187, and out-door relief was administered during that month to 811 families. With regard to this out-door relief, which consists of the small pittance of fifty cents a week, it is rarely, if ever, given to men, but almost exclusively to poor widows with small children; and with regard to the 554 men in the almshouse, they are not all citizens and the bulk of them are so infirm and decrepid, that in my judgment, if that be a fair estimate of them in ordinary periods, and it seems to be so for a period of seven years, not more than 100 would be able to leave the almshouse for the purpose of voting. I beg leave to state also, Mr. Chairman, that the gentleman from Westchester [Mr. Greeley] was right and I was wrong, in regard to the particular date of the occasion to which he referred, in which paupers were used in a Congressional election—it was in 1846, not in 1842. That, however, was twenty years ago. Nothing of the kind has occurred since, and as evidence of it I beg leave to send up to the Secretary, and to request him to read a communication on this subject from the commissioners of charities and corrections in the city of New York, showing that no pauper has voted in that city for many years. I have only one more statement to make, and that is in answer to a question of the gentleman from Chautauqua [Mr. Barker] in regard to the increase of naturalization in New York at the last election. I do not know that the increase was as great as he states—equal to the three preceding years—but it was very large, and the

reason was this: under the law passed by the Legislature, all naturalized citizens were required to produce their papers, and minors who under the act of Congress of 1802 were naturalized by the naturalization of their parents, were required to produce their father's certificates. In a large number of cases this was impossible, and the parties had to be naturalized over again. In addition to this, by an act of Congress, all men who had served one year in the war were entitled to naturalization; and it may be gratifying to this Convention to know, that the number of alien soldiers who were naturalized during that period in my court were very great. I should think the alien soldiers and minors who were thus naturalized were very nearly equal to one half of all who presented themselves. These two causes were the chief ones in making the naturalization so much larger than in any of the years preceding.

The SECRETARY then proceeded to read the document referred to by Mr. Daly, in words as follows:

DEPARTMENT OF PUBLIC CHARITIES AND CORRECTION,  
No. 1 Bond street, near Broadway,  
NEW YORK, July 15, 1887.

*Hon. Charles P. Daly:*

Sir—The undersigned, on behalf and by instruction of the commissioners of public charities, respectfully deny the allegations understood to have been made, that the inmates of the almshouses of the city of New York, by their authority, have been permitted to vote at public elections.

In no instance have paupers voted to the knowledge of the board, nor has it consented to the discharge of paupers from the almshouse for such purpose by them, collectively or individually; but, on the contrary, they have forbidden the warden to dismiss or grant permits for leave on the eve of election.

Very respectfully, your obedient servant,  
JAS. B. NICHOLSON, *President*.

Mr. VAN CAMPEN—Mr. Chairman, I had designed to make some remarks on the amendment of the gentleman from Richmond [Mr. Curtis] and therefore made some preparations in reference thereto, but under the twenty minute rule of the Convention I have been obliged to change the order in which I desired to present that question. I shall therefore, content myself with merely stating some questions to this Convention. It is very well known that many questions are answered by merely having a clear statement of the case, that many questions, simple enough of solution, are found difficult by many to solve by reason of the manner in which the questions are stated. I, therefore, with the indulgence of the committee, will submit a few ideas in regard to this question. In the first place, the science of government is the highest of all sciences, because it secures the benefit of all other sciences. Its necessity is found in the inherent natural qualities and essential characteristics of man. Growing out of these it becomes an indispensable and imperative necessity to establish governments, employing such agencies, with such adequate and necessary powers, as will provide for the free, secure and peaceful enjoyment of all the rights

of man. If society met the highest ideal of perfection, no laws or rules would be necessary. But we are not living in that age of harmony when the lion and lamb shall lie down together and the lion eat straw like an ox, with a little child to lead them, but we, as all our ancestors, are controlled by sterner necessities. The prime or first necessities of government are exceedingly simple: 1. Laws or rules. 2. An executive or power lodged somewhere for their enforcement. 3. Judges or persons to determine as to the true intent and meaning, as well as the application of the laws. This brings us to the point who shall determine as to who shall make the laws, or what they may or shall be, by whom and in what manner enforced. Shall or can the laws be made by the whole body politic—men, women and children? It is impossible. Therefore, it becomes necessary to choose or select out from among the people persons to represent or to be in their place and stead, to make, to adjudge, to execute. The question is, who shall have and exercise that right of choice? By common and oft repeated consent, express and implied, the adult men of the State have exercised this privilege. I ask if there is any reason why this rule should be changed? Does the experience of the past prove that this privilege has been unwisely exercised. I affirm as a whole, the privilege has been wisely used. The laws have been equal and equitable, the adjudication has been wise and just, the execution moderate and salutary. No man, woman or child can stand before us and successfully controvert this affirmation. If such is the fact, is it wise or expedient to make any change in these provisions in regard to woman? The reason and good sense of this Convention answers no. And this decision will have the force and power that all decisions have which are founded in reason, common sense and the highest expediency, which alone gives security, sanction and rest. The demonstrations of experience, the wisdom that grows out of experience, the history of the past—these are our landmarks—these are the considerations which should influence us. It may be expedient to notice some of the incidental questions growing out of this question, though not pertinent to the amendment of the gentleman from Richmond [Mr. Curtis]. I refer to some of the social evils under which women are laboring, and to the evils they propose to remove and remedy. I cannot pass without referring to them, and especially in regard to the inmates of these terrible dens in all the cities. They say that by virtue of the law, by virtue of unfair discriminations by the male population of the State, these women are forced into these dens. The Rev. Mr. May says is it literally impossible for those women to make a living without submitting to prostitution. Mr. Chairman, in the name of the women I protest against such a libel. It is a falsehood. Sir, the voice that is raised here must resound upon all the hills and valleys of the State. I will venture to say that this difficulty is to be overcome in another way. The people of the State ought to recognize this state of society, that if the women were properly educated,

if they were taught to be useful and were taught to remember that the place of woman is at home, that the domestic relations, the family relations which God has so wisely ordained for her sphere in which she must walk, if they were taught the duties that grow out of these relations, to be useful, and not to soar too high, but gently to walk in the paths of usefulness, if they were taught lessons in the kitchen, from the cellar to the garret, if they were taught and impressed with the necessity of being useful, then the difficulty would be reached and removed. But, instead of that, they are taught to neglect and overlook these things, and to seek to be appreciated, to be petted and fondled, and not to lead useful lives. In the name of the women of this State, I protest against such an assumption, and I refer the gentleman back to them if the statement I make in regard to the evil and remedy is not true. Therefore we must speak out here, so that the women of the State may not be deceived, that they may not be misled by not understanding this question, so that the influences of this debate shall not be lost upon our constituency, and upon the homes which we represent, and the families whose interests are committed to our care.

Mr. E. BROOKS—Under the rigid rule which has been laid down by the Convention limiting the discussion to twenty minutes, it is impossible either to deliberate with propriety upon the amendment which has been introduced by my colleague from Richmond [Mr. Curtis], or upon the main and material question which is before this Convention in regard to colored suffrage. Sir, we were met here, some six or eight weeks ago, with the intimation from the author of this report, and from other gentlemen (a most unjust intimation I regard it) that there was a disposition on the part of the minority of this Convention to forego all action upon the Constitution itself, or, in other words, they were opposed to any material amendments to the Constitution. Sir, I was one of those who were opposed to calling a Convention for the amendment of the Constitution. I regarded the time as unsuited, and I believed the public mind to be in that disturbed state, that disqualified it to enter into the consideration of the great questions growing out of a new Constitution, or to consider such amendments to the existing Constitution as would enable us to deliberate with becoming judgment upon so important a subject. But the Convention having been called, I wish to say here for myself, and I believe for every member of the minority, that there was, and there is, a disposition so to amend the existing Constitution, as will make it acceptable to the great body of the people—so to amend it as the result will be a great improvement upon the Constitution as it exists. Sir, this is my purpose. And it is for this more perhaps than for anything else, that I have regretted to see on the part of the majority of this body a purpose so to attach a great provision—the provision, perhaps, for which the Convention was convened—to the body of the Constitution—I mean, of course, that which relates to colored suffrage, a purpose so to deliberate, and so to decide upon their action as will probably prevent the people from voting effectively upon other and great

amendments in the Constitution itself. Sir, I have been said by two gentlemen of this body, one from Onondaga, and I believe the gentleman from Rensselaer [Mr. M. L. Townsend] that this Convention *will* embody the negro suffrage provision in the body of the Constitution itself. Sir, the word “will” is but another word for “SHALL;” and in a deliberative body like this, although the power is supreme on the part of the majority to do what they will, I hope, sir, with more mature judgment, they will deem it *unwise* to carry out that purpose. Sir, I live in one of the smallest counties in the State. My business is in the great commercial emporium of the State. I see, as every gentleman in that great city sees, enormous evils growing out of the administration of the government. I see abuses which have been done there by the Legislature; I see there, indeed, the Legislature itself, in the exercise of excessive legislative power for the city of New York, and I desire that such amendments may be submitted to the Constitution as will enable the people here and everywhere, to act in reference to these abuses. I desire to secure their reformation without bringing in any questions connected with colored suffrage. I know that there are thousands—I do not know it of my own knowledge, but it is a subject of observation from what I have read, and from what I hear—in the dominant party of this State, who do not mean to vote for colored suffrage, and if you insist upon attaching this provision to the Constitution, you endanger not only it, but all the material improvements and amendments which may be incorporated into the body of the Constitution itself.

Mr. McDONALD—I rise to a point of order, that the question of separate submission is out of order, not being before the Convention, having been passed upon, and on account of the adoption of the resolution proposed by Mr. Graves.

The CHAIRMAN—The Chair is of the opinion that the gentleman from Richmond [Mr. E. Brooks] is proceeding in order.

Mr. E. BROOKS—Sir, I hope when the gentleman has had a little more experience than he now has in regard to legislative bodies, he will know that there is something of permission and something of acquiescence in the discussion of questions in Committee of the Whole, which are not common when the question is before the Convention. Otherwise, no opportunity would be afforded to gentlemen to deliberate upon any of these questions in a proper and becoming manner.

Mr. HUTCHINS—Will the gentleman allow me to ask him a question?

Mr. E. BROOKS—If it is not to be taken out of my time, certainly; if it is, no. I will answer questions if the time lost in answering them is not taken out of my time.

The CHAIRMAN—The Chair is of the opinion that it will have to come out of the gentleman's time.

Mr. E. BROOKS—Now, Mr. Chairman, the question the gentleman wanted to put to me, is whether I speak for the democratic party. No, sir, I speak for myself, and no one else. I am not assuming as to speak for that party, or any large number connected with it. I say I desire to have this Constitution improved and adopted, and it



stead of being cowardly, as has been suggested by various gentlemen on this floor, I urge that this question be presented upon its own merits; it seems to me that if there is any cowardice in it, it is on the part of those gentlemen who refuse to unfold their banner to the breeze, who in the State are in the majority, who can act independently in this case; who have made it the shibboleth of their faith and who should be ready to stand or fall by it. Let it be presented in that aspect to the people and let them vote yea or nay upon it. That is my judgment as to what is best to be done to secure colored suffrage in this State to the negro. Now, sir, we hope to have improvements in the administration of the canals, and we hope for improvements in the administration of the finances of the State, and when we speak of the administration of the finances of the State of New York, we speak for a great body of the people of the United States, for about one fifth of the entire taxes of this Government are imposed upon the people of the State of New York. Sir, when the Federal government collects in one year five hundred and eighty millions of Federal revenue from the people of the United States—a tax one hundred millions beyond all that is imposed by the government of Great Britain upon the people of Great Britain, and when it imposes a tax of one hundred and ninety millions more than all the taxes imposed upon the people of France by the government of France; and when you, Mr. Chairman, will remember that the property capable of taxation by the government of Great Britain is equal to forty thousand millions of dollars, and in France equal to thirty-six thousand millions of dollars, and that in the United States these means are reduced to the small amount of sixteen thousand millions of dollars, for all real and personal property, you will behold in this extraordinary fact, the oppressive system of taxation imposed upon the people of the United States. With this small comparative property we endure, as I have said, a tax equal in its federal demands to five hundred and eighty millions of dollars, with no corresponding amount in the governments I have named. Sixteen thousand articles are taxed by the federal government, which every man feels in all he eats, and drinks, and wears, and consumes, which is a part of himself, and with but eighty-two articles taxed in Great Britain. And this, sir, is one of the questions which addresses itself to every member of the Convention as well as to those who have charge of our great question of internal improvements. I wish to see the finances of this State improved; I wish to see the city governments improved, and especially that the canals should be wisely regulated, so that there may be a great deal less of stealth, so that there shall be a greater performance of public duty for a smaller amount of money. And it is for these reasons, among a great many others which I have not the time to enumerate, that I desire to see the mind and temper of this Convention concentrated upon these great material questions connected with the happiness and prosperity of the people of the State. This question of franchise to some seven or ten thousand colored persons should not be identified with them nor made to supersede them

I do not wish to see a proposition, like this of colored suffrage, harnessed like Mazeppa, to his horse, for, while you overthrow the horse, you will at the same time do the greatest injury, and inflict terrible suffering upon the rider himself. The question of suffrage is one of great practical importance, I admit. It may be idle here to discuss it. Gentlemen may have made up their minds (as the gentleman who interrupted me did) that the time has come when it is not proper to discuss this question of separate submission. But, sir, in virtue of its importance, and the greater interest of other questions which remain behind, I have presented it for your consideration. I do not propose to discuss the negro question at all, philosophically, physiologically, embryologically, nor in any other way. I have my mind made up upon that question. It differs entirely from the views of the gentleman from Rensselaer [Mr. M. I. Townsend], and perhaps from that of the great body of the members of this Convention. My mind is this, in brief, that as you cannot make one hair white or one hair black by any legislative decree, or by any legislation, so you cannot change the relations which exist between the white race and the black. You cannot change them; you may do something for their education, and you may in a measure make them better members of society, and so far as this can be done, I not only bid you "God speed" in the effort, but am willing to co-operate with any gentleman in the Convention or out of it in attaining that most desirable end. So long as the Almighty has made this great difference between the races, so long as he has made the hand of the black man one twelfth of an inch longer, and one tenth broader, and his foot one-tenth longer and one-ninth broader, so long as he has made his forearm shorter, and every muscle and limb different, from the knee to the ankle, so long as he has made that broad difference between the head of the white and black man, as ninety-seven cubic inches to sixty-six cubic inches—so long will these differences remain a fixed law of nature. They are not to be changed by legislation; they are not to be changed in this Convention, and, according to my idea, however great an error it may be, it is, with me at least, an honest conviction, that all such legislation on behalf of the black race, so far as it relates to the question of suffrage, tends rather to injure than to improve them. Sir, every fair man sees that the franchise must be followed by other great privileges. It must be followed by the right to hold office. Black men must fill your jury-boxes; they must become your school teachers; they must be your governors and legislators, if you are honest with them and if you mean in good faith that they are your equals. If you do not mean to do this, and if you do mean to carry out a sort of freedman's slavery by getting their votes, and at the same time denying them all the privileges of office, you are deceiving them. You must take this question of franchise to all its natural results, and say that if these men are equal as citizens, they are as a matter of course entitled to all those privileges of equality which belong to the white race itself. Every colored man feels this. To deny him the rights incident to office, while granting him the privilege



of the franchise, is to hold out to him a hope which he, as a sensible man, feels that he never can realize, and hence it is that a great body of the sensible negroes at the North and at the South, have gone to those governments abroad which they established, and it is an example to us, and for us that where they have established a government of their own, they have cast off the white race. Why, sir, look at the government of Liberia to-day. It is a government of black men, by black men, for black men, and no white man is permitted to hold any office of honor or trust in that government. Look to the government of Hayti. It is the same thing there. By a decree, they exclude all white men from holding office there. Now, Mr. Chairman, in these late days, it may not be a proper thing to say, but it is nevertheless true that this government of ours was established by white men for white men. They so created it, and all your quotations from the Declaration of Independence about the equality of races are in truth, what Mr. Choate once called them, so many "glittering generalities," having some truth in them, I grant, but when you analyze that truth, you are entirely unwilling to make the application claimed for it. Why, gentlemen, is this a government created, established or maintained by the consent of the governed? What is the example which has been cited here within the last few minutes? What are the facts? Twelve States of this Union, if they could have had their own way, would have secured their separate independence. By the strong arm of the government they were compelled to remain a part of the Union of the States and to live under the Constitution of the United States. Where was the consent of the governed in that case? Sir, it rested where it ought to rest, in the general government to maintain its own unity. It was by the power of the general government that the rebellion was put down. It was most truly said the other evening by my friend from Rockland [Mr. Conger], that there was one million majority against the late chief magistrate of this nation, Abraham Lincoln, whose words and oath are inscribed above your head. A million of people in the majority, and this majority never consented to be thus governed by Mr. Lincoln; but yet in due obedience to the law, and to that law which I hold in my hands, which is the supreme law of the land, I mean the Constitution of the United States, the majority yielded and the rebellion raised by or through this election was very properly put down, and the union of the States maintained. Albeit, Mr. Chairman, we have witnessed so many innovations from time to time, as to make it almost out of order to speak with reverence and respect of the Constitution of the United States, for, as was said by the great leader of the party, in the House of Representatives, the other day, "Some fragments of the old shattered Constitution had stuck perhaps in the kidneys of some Senators and troubled them at night!" Aye, Mr. Chairman, this is the estimate of the American Constitution in this year of our Lord, 1867. "Some fragments of the Constitution of the United States sticks in the kidneys of Senators and trouble them at night!" Sir, I confess I have great respect for that Constitution, old and

shattered as it is, and I have great respect also for the fathers who framed it. I believe that no people will ever pay a proper respect to posterity who do not render a proper respect to their ancestors. I am, if you please, one of that class we sometimes in derision stigmatize as "old fogies." I believe in the fathers; I believe in the government which they established; I do not believe in your modern innovations. I believe in the words of Edmund Burke, that it cannot be too often repeated line upon line, and precept upon precept, until it passes into the currency of a proverb, that "to innovate is not to reform," and it is your constant daily innovations upon the Constitution of the United States, which has endangered and is endangering the government itself. Step by step we have made these advances. My colleague [Mr. Curtis], called it progress. I call it innovation. I call it departing from the great landmarks of our fathers, and I warn gentlemen that the same fate which has befallen other governments, will befall ours, unless we pay more respect than we have to the teachings of the fathers. The great ocean is made up of drops of water, and we feel from time to time, that as these innovations continue to flow on and swell the tide of despotic power, that our public liberties and our public safety are endangered. Step by step we make those advances upon our dearest rights and privileges—we are by our own hands consigning our government to its grave, and may ere long say with Byron, of his friend Henry Kirk White:

"So the struck eagle stretched along the plain,  
No more through rolling clouds to soar again,  
Views his own feather on the fatal dart  
And winged the shaft that quivered in his heart.  
Keen were his pangs, but keener far to feel,  
He nursed the platoon that impelled the steel;  
And the same plumage which had warmed his nest,  
Drank the last life drops from his bleeding breast."

Mr. FULLER—I do not rise to trouble the Convention with any extended remarks. The Convention will bear witness that I have occupied but little of its time. But sir, I too, with the gentleman from Richmond [Mr. Brooks] have some respect for the fathers of the Republic; and I cannot sit silent and hear their doctrine so often and so foully impugned. Sir, next to my Bible I have been taught by my fathers, in whose veins the blood of the Revolution flowed, to reverence the doctrines of the Declaration of Independence. When the representatives of the people of the colonies assembled in Independence Hall, and put forth those doctrines, they pledged to their support their lives, their fortunes, and their sacred honor; and upon the battle-fields of the Revolution, they sealed their devotion to them with their blood. But sir, we are told here to-day and we have been told before more than once, that this same charter of our liberties is a fallacy. We have been told here that it is not true that governments derive their just powers from the consent of the governed. Sir, I maintain that they do, and I say that unless they do, then the Declaration was put forth and the blood of the Revolution was shed in vain. Gentlemen say it is a fallacy, because we were under the necessity of putting down a rebellion in the southern States against the government. It

is no fallacy, and the example cited does not prove it to be a fallacy. It is still true that all governments derive their just powers from the consent of the governed; and also true that there must be some way devised by the social compact in which that consent shall be expressed. When the Constitution of the United States was adopted, the people of the Southern States as a part, as an integral portion of the people of the United States, gave their consent to it, and after having given their consent to it in that solemn manner, they had no right to withdraw that consent; and that was the question which was submitted to the arbitrament of the sword. Though they had given their consent in that solemn form, they contended that they had a right to withdraw it under the reserved rights of the States; and we contended they had not; that having given their consent to the great charter of our government, they had no right to withdraw it, and that was the question which was determined in our favor by the war. And now, sir, I protest, standing here, in behalf of my constituents, against this idea that the doctrine contained in the Declaration of Independence is a fallacy. And now, sir, I come to the question pending. I am opposed to the amendment offered by the gentleman from Richmond [Mr. Curtis], and in saying this, I do not think that the position I take conflicts with the one I have previously assumed. I contend that the females of the State of New York have given their consent to the government under which they live, and that they have given it in the proper form; and that is really the question before the Convention, how that consent should be given—whether it shall be given in person by their votes, which they shall deposit in the ballot-box, or whether it shall be given through their husbands, in the way God designed it should be given. Sir, my constituents are not in favor of this innovation, and least of all are my lady constituents in favor of it. I believe that there has but one single petition come from the county of Monroe in favor of female suffrage, and that one is from a single individual. It is to the credit of the county I represent that none others have come. They have not been sent, because the ladies of that county are opposed to this innovation. They are opposed to that small minority of strong-minded women whom the gentleman from Richmond [Mr. Curtis], so ably represents, and they object to having the elective franchise forced upon them by that small minority against their will. The ladies of Monroe county, whom I have the honor to represent, are not inferior in education, refinement, in cultivation, and in all that goes to make up the true woman, to the ladies in any other part of the State; but they have not asked, and do not ask, to have this privilege conferred upon them. And, sir, I protest against it in their name. I am opposed to it for another reason also. I believe the granting of the elective franchise to woman would unsex, would corrupt and degrade her. Sir, there is such a thing as running the elective franchise into the ground; and this proposition to extend it to woman looks very much like it. Sir, I am no prophet nor the son of a prophet, but I will venture to predict that if this innovation should ever be made, the time will not then be

far distant when it will end in the destruction of our institutions and our form of government. There is a change, as has been said, which is not progress. It is a change which precedes dissolution, and I believe that if this innovation is made, it will end in the dissolution of society and in the disorganization of our form of government.

Mr. HITCHCOCK—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Hitchcock and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, and had made some progress therein; but not having gone through therewith, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was then put on granting leave and it was declared carried.

Mr. BARNARD—I move that the Convention take a recess until four o'clock.

Mr. LEE—I move to amend by making the hour half-past seven o'clock.

The PRESIDENT—In the opinion of the Chair, the motion is not amendable.

The question was then put on the motion of Mr. Barnard, and it was declared carried, on a division, by a vote of 58 to 26.

So the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock and again resolved itself into a Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; Mr. ALVORD, of Onondaga, in the Chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by Mr. Curtis to the amendment of Mr. C. C. Dwight to the clause as reported by the committee.

Mr. MERRITT—I regard the admission of females to the right of suffrage as a question of practical expediency. The right is to be granted or withheld as a majority of the electoral body shall at the proper time decide. The change contemplated in the fundamental law is a great one. It is in contravention of the established customs and practices of all organized governments up to the present time, but that fact does not necessarily prove that to confer the right would either degrade woman or endanger the State, as suggested by the gentleman from Onieda [Mr. T. W. Dwight], nor that if the privilege of holding office should accompany and follow its bestowal, women would necessarily be chosen by the great body of the people to fill offices for which they are not fitted, either on account of physical or intellectual incapacity. It is paying altogether too great a compliment to them to assume in discussion that by their superiority as practical business persons they would command and secure such approval

as candidates and thereby secure their election. It was admitted by the gentleman from New York [Mr. Daly] that, so far as the effect of extending the right as contemplated to women, on political parties, results would not be materially changed. If so, no danger to the State could well be apprehended, especially so long as the party now in power shall continue to hold the reins of government. But, it is said that women may aspire to the highest offices, and their ambition be thereby stimulated so as to in some way result in injury to them. I would respectfully ask whether women are now prohibited from holding any office within the gift of the people? I am willing to admit that the commonly accepted idea is, that under our present Constitution males should hold the offices, but it is not so provided in that instrument. The word used is "person," and it applies to all officers, not only to executive and judicial but those more subordinate. There is but one exception, and that is in the case of admission to practice in the courts of justice, this privilege being confined to males who have reached the age of twenty-one years. I would ask gentlemen whether women are not now eligible to legislative offices? And whether, if Mrs. Elizabeth Cady Stanton had been elected to this body by receiving the largest number of votes, and having received proper credentials, there is anything in our Constitution, or in any existing law, by which she could be excluded. If there is, I am not aware of the fact. I am free to admit that none should be permitted to hold office who are not citizen electors. In order to thus provide, the committee, of which I have the honor to be a member, have, in the article which has been submitted, explicitly declared that Senators and members of Assembly shall be electors of the State. That provision does not, however, exist in the present Constitution. I hold it to be entirely within the province of the people, in their sovereign capacity as electors (those who are so at the present or at any future time) to say whether they will extend the suffrage or not. Having always exercised the right, it is proper that they should, until it is extended by them to the class who now seek it. I do not believe that a majority of the electoral body are prepared at the present time to grant this right to women, and indeed, I very much doubt whether if it should be immediately submitted to women exclusively they would by a majority claim the right or accept it. That does not, however, change the condition of things. This right of voting is nevertheless claimed by a considerable number of the females of the State, and the right and propriety of such extension of the elective franchise is conceded by a large portion of our male population. It is therefore a proper subject for the consideration of the people and it is proper that the electors of the State should pass upon the question. I would not, however, combine it with other important proposed amendments to the Constitution. I had the honor to introduce a resolution to submit this question to the people to be voted on by them in the year 1869. I am in favor of thus submitting it, but am opposed to submitting it in the body of the Constitution or at the same election. The delay proposed is not unreasonable, and if proper effort shall

be made by those specially interested, it can, by that time, be properly brought before the electors for their consideration and action. There has been a good deal said about the incapacity of women; the differences between the sexes in regard to mental constitution and moral characteristics as well as differences of duties in the social relation; but what, I ask, has that got to do with individual rights? I regard the question of female suffrage as a practical one, to be considered in the light of anticipated results. If we are satisfied that its practical effect would be favorable to law and order and good government, then we should favor it without being governed by tradition and past usages. Some stress has been laid on the statement that the extension of the suffrage would necessarily carry with it the duty of office-holding. That does not necessarily follow. I have already shown that females are eligible to office, or at least they are not prohibited by the Constitution. It provides that "no person except a citizen of the United States shall be eligible to the office of Governor," and shall have been a resident of the State a certain length of time. I would ask gentlemen whether in case a woman should be elected to that office, being a citizen of the United States and a resident as provided, could she not, if elected to that position, take possession of the office and hold it? It has been asked in regard to men of color, "Do you intend to make them eligible to the jury-box and to hold office?" They have always had that right. It does not, however, appear that because they have been eligible that they have to any great extent been chosen to such offices. Colored men possessing real estate to the amount of two hundred and fifty dollars have always been eligible to hold any office within the gift of the people of this State, and no man can deprive him of the right of filling the office of Governor if the majority of the people choose to elect him. As there is no prohibition in the existing Constitution against women and colored persons holding offices, the only question which is properly before us is whether we will extend to them the right of suffrage.

Mr. BARNARD—It appears to me that the advocates of female suffrage, not only the eloquent gentleman from Richmond [Mr. Curtis], but those who preceded him in the informal meetings that were had in this room, have forgotten one great fact, and that is that there is a religious view of this question that, to my mind at least, is conclusive against the affirmative side of the question. We must concede, whatever may be the theory as to whether voting is a natural right or a right given by society, that the voters in this country are the rulers in this country, and that whoever has the right of voting has the right of ruling. We have a Scripture warrant, at any rate, for showing that at a very early age of the world the right of ruling was taken away from woman by a judgment, which up to this time has remained unreversed. I hold in my hands a book that has sometimes been referred to—the Holy Scriptures. I will refer to the judgment that was rendered upon these individuals, and we must admit that from the time of its rendition to the present time it has remained unreversed. It was rendered at the time when the Almighty



called man to judgment for a violation of His first great commandment. I will read:

"And the man said, 'The woman whom Thou gavest to be with me, she gave me of the tree and I did eat.'

"And the Lord God said unto the woman, 'What is this that thou hast done?' And the woman said 'The serpent beguiled me and I did eat.'"

And here comes the judgment, and first to the serpent:

"Because thou hast done this thou art accursed above all cattle, and above every beast of the field; upon thy belly shalt thou go, and dust shalt thou eat all the days of thy life. And I will put enmity between thee and the woman, and between thy seed and her seed; it shall bruise thy head, and thou shalt bruise his heel."

Whatever may be said as to the natural fact of the serpent moving upon his belly and eating of the dust, the other part, the bruising of his head, we all know to be true, and that it has continued up to the present time. There is not one of us in this room that can remember when we were so young that we would not put our foot upon the head of a serpent and kill him if he went by our path. And while you may get up societies for the prevention of cruelty to animals, I have never heard of a society for the prevention of cruelty to serpents, and if such a society were to be incorporated, I venture to say that if a law were to be passed against such cruelty to serpents, it would be violated by all, and disregarded by one-half of the justices of the peace in this State—certainly by all the God-fearing ones, and that they would regard this law [pointing to the Bible] as a higher law than that passed by our Legislature. In regard to that, the judgment has remained up to the present time, and is likely to continue for all future time. Now let us look at the judgment against the woman:

"Unto the woman, He said, I will greatly multiply thy sorrow and thy conception; in sorrow thou shalt bring forth children, and thy desire shall be to thy husband, *and he shall rule over thee.*"

That law has continued from that time to the present. No sooner does woman pass from girlhood than "the desire" springs up in her breast, and although she may not then discover the object of that Heaven-made match which is afterward to follow, that desire may exist for days, weeks, months, or even years before the promised object is presented. At last she sees the loved one, she hears his voice, she beholds the glance of his eye, and she realizes that

"There are looks and tones which dart  
An instant sunshine through the heart,  
As if the soul that moment caught  
Some treasure it through life had sought."

Her desire is to him. In process of time she becomes his wife, and he becomes her husband and rules over her. He takes her to his house. He may issue no command; he may make no order; he leaves her to her appointed sphere, and he enters out into the world to encounter its contests, to meet with its rivalries, and its jealousies, and its various disappointments. He may proceed back to the house with a sorrowful heart, but he there finds all is sunshine; that his wife is

looking to the happiness of her partner as the great object of her life. He feels then that there is his home; that without any command except the mere law of love—that law which was implanted in her heart from her earliest infancy, and in the origin almost of the race—she will remain to guide and cheer him on his way through his earthly career. He encounters the storms of the world; she soothes him in his sorrows.

"Yes 'tis to lovely woman given  
To soothe our griefs, our woes allay,  
To heal the heart by misery riven,  
Change earth into an embryo heaven,  
And drive life's fiercest cares away."

That is her appointed duty. In behalf of the young men of our age, I would say that that duty will remain; let us not interfere with it. Let us not invest woman with the right of voting and the correlative right of ruling. Imagine what would be the condition of the young men of Brooklyn, where I reside—the "city of churches"—in the event of such a provision as is here proposed being engrafted into our Constitution. I will imagine the case of a young man, who, as we all have done at one time in our lives, starting out to seek his future mate in society. He calls at the house of the one he admires, and is told by the servant that she is out. He inquires where, and the reply is that she has gone down to attend a primary meeting in the ward, convened to nominate an alderman! "Well," the young man says, "I will call to-morrow." "No, you cannot call to-morrow; she has been elected a delegate to the county convention, which she must then attend, to nominate a sheriff, coroner and superintendent of the poor." "Well, if I can't see her to-morrow or on week days I will call on Sunday night." "No, you cannot call next Sunday, because she is going to Plymouth Church to hear a sermon on politics by the Rev. Henry Ward Beecher." [Laughter.] What is the poor fellow to do? The order of society is reversed. I do not know but what we will bring about the confusion of society which has been referred to by the gentleman from Oneida [Mr. T. W. Dwight]. It breaks up the established order of things; and, for one, I think the subject had better be let alone. There is, as he stated, a very wide distinction between the sexes. He has referred to the German poet to show how that distinction exists. But, sir, we have in our own land a poet who shows the distinction between the sexes, in very powerful language, where he says:

"Man is the proud and lofty pine  
That frowns on many a wave-beat shore;  
Woman's the young and tender vine,  
Whose curling tendrils round it twine,  
And deck its rough bark sweetly o'er."

Man's the rock, whose towering crest  
Nods o'er the mountain's barren side;  
Woman's the soft and mossy vest,  
That loves to clasp its sterile breast,  
And wreath its brow with verdant pride.

Man's the cloud of coming storm,  
Dark as the raven's murky plume,  
Save where the sunbeam, light and warm,  
Of woman's soul and woman's form,  
Gleams brightly through the gathering gloom."



Now, sir, that is the distinction which exists between the sexes. And I would see that distinction continued. I would look upon woman as she has always been looked upon—not as the strong-minded woman, going from State to State and from political meeting to political meeting, delivering political speeches—but as that other woman that may be referred to as the mother of Washington, and to that mother to whose funeral the attention of some of us has been recently called. I saw it at a lecture or a sermon by a minister that he recently attended the funeral of a woman. The coffin was borne by four of her sons. One was a justice of the supreme court of the United States; one was a distinguished lawyer of the city of New York, one was a distinguished clergyman, and one was president of the senate of his native State. They marched along bearing the coffin carefully, being unwilling that any other man should assist them in that last solemn duty. The minister might have gone on and said that another one was another distinguished son of America, whose efforts have tended to bring Europe and America closer together by the telegraphic cable. I venture to say that that woman could not have performed the distinguished part she did in life, and could not have raised those sons up to be what they are, if she had been traveling from State to State delivering political lectures. I venture to say that she would never have possessed that bright galaxy of jewels which she has presented to the world. When the Roman mother was called upon to show her jewels she pointed to her children and said, "These are my jewels." So that true American woman in life could point to her children and say, "These are my jewels," and a brighter galaxy no American woman need boast of. This is the true function of woman, and to remain at home, to promote the blessings of home, rear up her children to be useful, and if you please, distinguished members of society. Let us only know her by her love.

"For woman's love's a holy light  
That brighter, brighter burns for aye;  
Years cannot dim its radiance bright,  
Nor even falsehood quench its ray.  
But like the Star of Bethlehem  
Of old, to Israel's shepherds given,  
It marshals with its steady flame  
The erring soul of man to heaven."

Mr. M. H. LAWRENCE—I had not intended, Mr. Chairman, to say a word before this committee until the gentleman who has just taken his seat [Mr. Barnard] had proceeded with his remarks. But it seemed to me, when that gentleman was upon this floor addressing us, with that book in hand, that he supposed he was in some ancient assemblage of men such as that ecclesiastical court which tried the distinguished astronomer, Galileo, with book in hand, pronouncing judgment and anathema because he had the temerity to declare that the earth revolved around the sun; and like that ecclesiastical power, the gentleman seemed to read from that book, and form conclusions that women have no right to vote. It is the same argument that has been used by power and privilege ever since the world began to keep the masses of the world in poverty and bondage. Now I want it understood in this committee

that if I do have the temerity to vote for the amendment of the gentleman from Richmond [Mr. Curtis] I do not do it expecting that it will drive woman into the political arena. I do not do it for the purpose of producing domestic strife, but for the purpose of making more secure domestic happiness and more sacred our household gods. I wish to utter a few words here repelling the idea that we design to make politicians of women. It is no such thing. I vote for the amendment because I think, with the ballot in the hands of every class, we can secure to every class their just rights, and that is the only way by which they can be secured. I believe that with every class possessed of the ballot there would be a more equal distribution of the proceeds of labor throughout the State. I claim that there is no protection for any class without the ballot, and in my opinion it is a God-given right which we have no power to confer. When we allow people to vote we only allow what belongs to the people to do. It is their inherent right to vote. Gentlemen talk as if the body politic was going to be destroyed if the ballot was conferred upon women! I think the county of Columbia seems to be greatly disturbed lest all the ladies in the land shall turn politicians! Certainly that county must be disturbed, if we are to judge from the language of its distinguished representatives [Messrs. Gould and Silvester]. They have made it known to this Convention that the ladies of that county have no sympathy with this idea of woman's voting. The eloquent gentleman from that county who addressed us last evening [Mr. Silvester] stated that just before he left his home the women came swarming around him and said, "Oh, Mr. Silvester, we know you are a modest man [laughter], but when you get to Albany, at the great State Convention, do beseech the Convention not to confer this power upon us. We are afraid we shall go into crooked paths, and become demagogues and go upon the hustings, if the right to vote is given us." [Laughter.] The gentleman even took the opportunity of advertising himself to the great State of New York as a bachelor [laughter], and that his love extended to all womankind, and he turned his hand out in this direction [pointing to the sofa in the rear of the room where ladies were sitting.] [Laughter.] I wish to suggest to my friend from Columbia that such a wide-spread and extended love for all woman-kind may not be acceptable to the ladies of Columbia county. [Laughter.] The ladies out in the western part of the State where I reside, like something a little more definite. [Laughter.] When a gentleman there expresses such a widespread love it is looked upon with some degree of suspicion. [Laughter.] But in all seriousness I believe the ballot to be the great educator and I care but little what effect my vote has upon my constituents. I know they believe that I will cast an honest vote. I know it would be idle for me, after this Convention has listened to the able, statesmanlike and eloquent address of the gentleman from Richmond [Mr. Curtis], to attempt to add anything of interest to what has been said. But, sir, when I vote to extend the right of suffrage to woman, I vote to give to woman an equal chance with man in the race of life. I vote to take away

all obstacles in her pathway, that the two sexes may have an equal opportunity for success. I believe, as I said, that the ballot is a great educator of the people. I believe that it will be given to woman, and I believe that when she is possessed of it, we will have a political millenium in comparison with the present order of things. And I believe that we will never have an improved state of civil society until woman does possess the ballot. Why should we disfranchise one-half the adult population of this State? Our mothers, who have been widows from our earliest infancy, have paid taxes, have assisted to build school-houses, and performed all the duties of a male citizen, and yet have had no voice in matters of local government. I know districts where the greater portion of the taxes are paid by women. Why do you deny to women, under such circumstances, the right to be heard and to participate in government, and yet compel them to pay taxes? It is a true doctrine that there should be no taxation without representation. The gentleman from Kings [Mr. Barnard], who addressed us, Bible in hand, said she was weaker, that God Almighty ordained her present condition. The gentleman pretends that woman has been doomed by the Almighty to all this misery upon her sex for the last six thousand years, and that it has been with the approbation of the Almighty. I believe in no such doctrine. Does the gentleman mean to tell me that the Almighty ever made a king to rule over a nation? I deny that He ever did except because of their sins. Put weights upon the limbs of a people so that they cannot move hand or foot, cannot help themselves, and then charge them with inferiority! That is the history of woman and of the female mind. But, sir, by permission of the Convention, certain ladies who have been stigmatized as strong-minded women, addressed many members of the Convention in this chamber. I had the pleasure, in common with other gentlemen, to hear them. I do not know that the gentleman from Kings [Mr. Barnard] did; but I wish to say this, that I believe the time will come when the people of this State will decide whether those ladies are stronger minded than the gentlemen of this Convention who have addressed us. It does seem to me if there was any evidence of strong-mindedness, it was quite as manifest as that which has been exhibited in this Convention.

Mr. CURTIS—I have no wish to delay the question, and certainly not to prolong the debate in which my own share—

Mr. HAND—I rise to a question of order. I submit that the gentleman has spoken once—

The CHAIRMAN—The Chair is of the opinion that the gentleman from Richmond [Mr. Curtis] has not spoken since the rule went into operation.

Mr. CURTIS—I have listened with the utmost interest to the melodious debate which has raged upon this floor. I have heard, sir, the rattling volleys of compliments which have been fired over the graves of the equal rights of woman, and it is the same old, hollow and familiar sound. I have felt, sir, during all the flattery and gallantry of this discussion, that the essential reason of the question has been undisturbed. It is not a jest. It is not a point which is to be dismissed with a sneer. It is not to be disposed of by a

pleasing couplet of verse, nor is it to be settled by the light theories of gentlemen upon this floor, nor by the thoughtless theories of gentlemen anywhere in the world, of the capacity and function of women. The grounds, sir, upon which this movement rests are twofold. In the first place, as a participator in the natural right of humanity, and as an heir of all the protection which experience has shown to be essential for the defense of those rights, every woman has precisely the claim to that defense which every other person in society has, subject only to the equitable conditions which are reasonably imposed. I have not heard that position really assailed in this Convention. It seems to me to be absolutely impregnable. And the second position upon which the thoughtful advocates of this reform plant themselves is this: that the function of the sex, upon which gentlemen have been so eloquent and amusing, can never be determined until there is the same absolute liberty of development allowed to women that there is to man. I have heard incessantly from the lips of my friend from Broome [Mr. Hand], and from other gentlemen who have addressed the Convention upon the opposite side, what they call the order of nature and the divine intention in regard to women. Sir, I have heard very much more of the intentions of God and the reasons of divine Providence upon this floor than I myself can presume to know. It is enough for me that in this world we cannot apprehend the divine intentions in humanity except by securing the most absolute liberty for the development of every function with which God has endowed us that is compatible with the equal liberty of every other man. And, sir, speaking as a human being, I claim in behalf of every individual of the other sex, that I cannot know, and you cannot know, and no gentleman in this Convention or in the world can know, what is her true prerogative, what is her true function, or the sphere of her sex, until she enjoys precisely the same liberty of development that we claim for ourselves. And if any gentleman will tell me that he will willingly renounce his share of the government of the country in which he lives, being sure that he and every other man in the same condition will still have that ample, equal liberty of development, then, sir, and not till then, will I concede that he justly requires a similar surrender of women. But I protest with all my humanity, and with all the energy of my mind, against calling our theories, the theories of men who have constantly excluded women from the government and the politics of this world, the divine order in regard to women. Sir, I put that objection under my heel with precisely the same contempt that I disregard the claim of any king or emperor that he rules by the grace of God. The grace of God in humanity is absolute liberty. The grace of God, so far as we can see it in the human order, is perfect freedom of development. That is what I claim, sir—absolute equality of development and unlimited freedom of choice. I claim that not for woman as woman, but I claim it for her as a human being. I claim it for every woman and I claim it for every human being. Sir, my friend and colleague from Richmond [Mr. E. Brooks],

in closing his remarks this morning—to which we listened with the same kind of silent deference, with which we regard a funeral train enter a cemetery, by raising our hats in respect—my eloquent colleague declared that for his part he thought it wise to hold by the wisdom of our ancestors, and to make no change without the amplest reason, and he fortified his position by a remark of Burke. I remind him, sir, of another remark of Burke, which I do not doubt he will remember, and it is well for this Convention and for every body of men who are making fundamental laws, and who wish to entrench themselves upon the conservatism of Edmund Burke, to remember it also. He said in one of his legal arguments or speeches: "I am not of the opinion of those gentlemen who are against disturbing the public repose. I like a clamor whenever there is an abuse. The fire-bell at midnight disturbs your sleep, but it keeps you from being burnt in your bed. The hue and cry alarms the country, but preserves all the property of the province." Sir, in regard to the amendment which I have proposed to this Convention, it may be now that its voice from the lips of those who advocate it is but the silver tinkle of a distant bell. I invite my colleague and I invite every thoughtful man to listen well, to observe that the sound increases, that it swells, and before some of us are dead it will culminate in a peal that will "ring out the old, and ring in the new." I claim that the essential argument has been untouched. I demand absolute equality of development for every human being, and unlimited freedom of choice. I ask, Mr. Chairman, that this question may be taken by a count.

Mr. E. BROOKS—Mr. Chairman—

The CHAIRMAN—The Chair will inform the gentleman from Richmond [Mr. E. Brooks] that he is out of order.

Mr. E. BROOKS—I do not wish to trespass upon the time, but I would like to say a word upon the question.

The question was then put upon the amendment of Mr. Curtis, and it was declared lost on a division, by a vote of 24 to 63.

Mr. SMITH offered the following amendment:

Substitute the following for section one, to-wit:

"SEC. 1. Every man of the age of twenty-one years, who shall have been an inhabitant of this State for one year next preceding an election, and for the last ten days a citizen of the United States and a resident of the election district where he may offer his vote, shall be entitled to vote at such election in said district, and not elsewhere, for all officers elective by the people. *Provided* that after the year 1868 no person shall be entitled to vote at an election unless for the last thirty days prior thereto he shall have been a citizen of the United States; and *provided* also, that idiots, lunatics, persons under guardianship, felons, persons convicted of bribery or of any infamous crime, and persons convicted of having received money or other valuable thing to influence or reward their votes, given at an election after the adoption of this Constitution, unless pardoned or otherwise restored to civil right, shall not be entitled to vote. No person who shall receive, expect to receive,

pay or offer to pay, contribute or offer to contribute to another to be paid, any money or other valuable thing to influence or reward a vote given or to be given at an election, or to reward an elector for attending the polls at such election to vote, shall vote at such election; and upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm before such inspectors that he has not received, does not expect to receive, has not paid or offered to pay, contributed or offered to contribute to another to be paid, any money or other valuable thing to influence or reward a vote given or to be given at such election, or to reward an elector for attending the polls at such election to vote. The Legislature shall provide by law for the trial of persons charged with bribery, or of having received money or other valuable thing to influence or reward their votes given at an election since the adoption of this Constitution, and upon such trial the accused person may be a witness in his own behalf; and no other person shall be exempt from testifying on such trial on the ground that his testimony may tend to criminate or degrade him; but such testimony shall never be used against him in any criminal proceeding; and *provided* also, that the penalty upon conviction of having received money or other valuable thing to influence or reward a vote since the adoption of this Constitution, shall extend only to disfranchisement and disability to hold civil office. Laws may be passed excluding from voting at an election every person who shall have made or shall be interested in a bet or wager depending upon the result thereof.

Mr. SMITH—Mr. Chairman—

Mr. SPENCER—I desire to ask the gentleman [Mr. Smith] whether the language of the amendment proposed by him is not liable to the construction that only those would be entitled to vote who at the present time, or at the time of the adoption of the Constitution, are citizens? I would suggest to the mover that he so modify that language as to read as follows: "Every man of the age of twenty-one years, who for one year next preceding the election shall have been an inhabitant of this State, and for thirty days a citizen of the United States, etc."

Mr. SMITH—I propose to make an explanation of the amendment, and if the gentleman will look at the amendment, and it be found liable to the criticism which he suggests, it can be altered. My principal object in offering this amendment is to secure, if possible, a more stringent clause intended to purify the elective franchise. I have followed, in drawing that amendment, the original as introduced by the committee, making slight alterations which will be apparent by comparing the two. It makes the thirty-day clause prospective. It omits the clause in regard to paupers. I should have no difficulty in voting for that, myself, on principle, but there seems to be very much objection to it in the committee and on the part of the members of the Convention, and therefore I have omitted it from the substitute. The clause in relation to idiots, lunatics, and persons under guardianship, is retained. I suppose that no member of the Convention would claim that an idiot, lunatic, or person under guardianship ought to vote. The only objection



made to that clause has been, that there might be some difficulty in determining this class of persons at the polls, and that difficulty is obviated by section three, which provides that laws shall be made for ascertaining them by proper proofs. The Legislature, under this clause, may regulate this matter. It may provide for fixing the *status* of these classes by judicial proceedings, or leave it to be determined under proper regulations at the polls. That seems to meet the objection which has been made to that section on account of the difficulty suggested. The substitute adds to the list of disfranchised persons those who shall have sold their votes, and provides that the Legislature shall make laws for the trial and conviction of such persons. Now, I beg that the Convention will take into serious consideration the necessity of such a provision. Whatever we may do, or neglect to do, if we fail to secure in the instrument we are about to frame a provision that shall be effective in purifying the elective franchise, we shall fail to perform the most important duty devolving upon the Convention. It is most imperiously demanded by the public of all parties. I have been appealed to on this point by men of all parties, and earnestly enjoined to do all in my power to secure some provision in the new Constitution which shall prevent corruption at the polls. It has become a very serious evil, and one which is dangerous to the stability of our government. Thousands and thousands of persons every year sell their votes, and tens of thousands of dollars are expended in every important election in corrupting the fountains of power, in buying votes, and controlling elections. Men to whom the privilege of voting is granted for the protection of their own rights, and as a sacred trust to be exercised for the good of society, prostitute it to their own base and selfish purposes. It is a fraud upon the Constitution; for the man who buys votes, instead of casting but one vote as he is entitled to do by the Constitution, may have fifty or one hundred, according to the amount of money he is able or willing to spend in purchasing them. It degrades the privilege. It results in the election of corrupt and incompetent men to official positions. In making nominations the question is asked, not who is the fit man, or who is the best man for the office, but, to use cant phrases, "Who will bleed most freely?" — "Who has the largest pile?" It often happens, though not always, that men totally unfit for the position, and destitute of moral character, who have money to spend, are elected to responsible offices. The Legislature of our State for several years past afford an instructive illustration. It is generally true that if a man buys his way into the Legislature, he will sell his way through it. He will sell his vote and influence. The evil does not stop here; the example and influence is felt in all other departments of government. By an inevitable law, evil propagates itself. If the fountain is impure the stream must be impure; and the stream of corruption sent forth from this poisoned fountain gathers force and breadth as it rolls on, and spreads desolation throughout our land. In my judgment, there is no one thing that so urgently demands our serious attention as this question. As I have

stated, my purpose in proposing this substitute is to make the provision for purifying elections more stringent and effective. The provision reported by the committee which permits a challenge at the polls, is retained in the substitute. Both the buyer and seller may be challenged and put upon their oath, and if they cannot purge themselves they are not permitted to vote at the pending election. It seems to me we ought to go further—that we ought to permanently disfranchise the man who sells his vote until he be restored to the rights of citizenship by the pardoning power. Now, it may be asked why do you not include the buyer and have him disfranchised permanently? My answer is that the men who use their money to promote elections are not so culpable as the man who sells his vote. Why? Because the moral quality of an action must be determined by the motive. The man who sells his vote has no motive but the lowest and basest one. It is pure selfishness and venality. He cares not for his country, and he cares not how he exercises that sacred trust. If he can get five dollars for his vote, that is all he cares for. But it often happens that the man who uses money feels a deep interest in the pending election, independent of all selfish considerations. He believes, it may be, that the welfare and safety of the country and society and the stability of the government depend upon the success of his party in the pending election. He feels the necessity of using money, because he knows that there are voters in the market, and if he does not secure them in the only way they can be secured, their votes will be lost to the cause of truth. Hence it is, that upright and moral citizens use their money in promoting elections, and yet they regret the necessity, and are anxious that some provision should be made to prevent it. But, Mr. Chairman, even if the buyers were equally guilty, I should not think it expedient to include them. It would be regarded by them as an unjust reflection, tend to provoke their hostility to the provision and increase the difficulty of enforcing it. A certain object is to be accomplished, to-wit: to prevent the traffic in votes. If there were no votes to be sold there would be none to be bought. If we can accomplish the object by disfranchising the seller, no matter if the buyer be equally guilty, the question is, how can we best accomplish the object which we have in view. I would retain the original provision allowing the challenge of both buyer and seller at the poll, to be followed by disfranchisement at that election if they refuse to take the oath, or fail to purge themselves of guilt. In addition to this, the seller should be permanently disfranchised. He should be sent into society with the mark of infamy upon him, as a man who had betrayed his trust, and shown himself unworthy the high privilege of exercising the elective franchise. It would be a proclamation to the community in which he should dwell that this inestimable privilege of an American citizen must not be converted into an article of merchandise. One such example in each community would, in my judgment, forever cure the evil. I might extend my remarks upon this matter, but my purpose



is merely to indicate the object and character of the proposed amendment. I have endeavored to draw it so as to meet objections which have been raised to the original section by gentlemen who have addressed the committee, and hope that this, or something similar to it, will meet with general favor, and that we shall agree upon a provision that will forever purify our elections. In no way could we be instrumental in doing a higher service to our State; and if our labors thus result we shall ever look back upon them with the highest satisfaction.

Mr. CONGER—I only wish to raise for the information of the committee and for our own guidance a question of order, whether the gentleman in submitting a series of propositions as amendments to the amendment has not submitted a series of propositions which will amend the whole article now before the Committee, and whether he is not limited at present to the first proposition. I do not seek to interfere with the right in committee to consider the whole proposition in the due and regular order of its parts, but to inquire whether the gentleman from Fulton [Mr. Smith] is not now limited to the first proposition which is an amendment to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

The CHAIRMAN—The Chair regards the amendment offered by the gentleman from Fulton as in order.

Mr. FOLGER—I wish to ask the gentleman from Fulton [Mr. Smith] whether he cannot separate his amendment so as to propound to the committee the exact point which he wishes to present. I do not understand him as desiring to change the whole amendment, proposed by the gentleman from Cayuga [Mr. C. C. Dwight], but only to have engrafted upon it so much of the phrasology which he has adopted as will convey in the Constitution to be adopted the idea which he has presented of punishing those who sell their votes or purchase them. I desire him to separate, as I think he can, so much of his amendment as will present the spirit and feature of it to the committee alone. I do not see the necessity of altering the phrasology of the gentleman from Cayuga [Mr. C. C. Dwight] merely to present this other idea, which is not in that amendment, of punishing the sale of a vote. Will it not present to the committee more definitely and more pointedly the idea he wishes to engraft upon the Constitution, that of rendering it infamous and a crime to sell a vote. I think it will be better to bring the committee to a vote upon that point, without frittering away their attention and exhausting it, and spreading it over the whole article, which he does by proposing the whole article as a substitute.

Mr. SMITH—If I may be permitted to answer the gentleman, I would say, that I like the original section as drawn by the committee, with very few exceptions; therefore my object was to retain the original as far as possible, and to incorporate into it these additional amendments. I prefer the original with these proposed amendments to the substitute offered by the gentleman from Cayuga. The proposed changes are so interwoven with the original, that it would be very difficult to separate them without considerable examination and care.

Mr. BARNARD—I ask that the question be divided, and that we take up each portion of the amendment separately.

The CHAIRMAN announced the question to be upon the first portion of the amendment offered by the gentleman from Fulton [Mr. Smith].

Mr. RATHBUN—The amendment proposed by my colleague [Mr. C. C. Dwight] has an advantage which it is well worth our while to consider. It has been the fundamental law of this State since 1846. All the provisions of residence contained in that amendment and the proviso are taken *verbatim* from the Constitution now existing, with which the people are entirely familiar and to which they have conformed for the last twenty years. Now, sir, the language is clear, definite, well understood practically by that long experience, and the departure from it or any of its provisions would require a good deal of examination and a good deal of investigation, much more than could be given to it by the mere hearing of a proposition read, in which we can recognize distinct omissions, to wit: no residence in the county is called for by the amendment of the gentleman from Fulton [Mr. Smith], if I recollect right, and consequently no residence in the election district fixed upon. Here are omissions which I apprehend the Convention will not be willing to part with; they are not new; nobody is to be deceived, nobody is to be defrauded, but they will have the old rule with which everybody is familiar, and yet I have never heard within the course of that twenty years any person find fault with the provisions of that section in the Constitution in regard to the matter presented by that amendment of my colleague [Mr. C. C. Dwight]. No, sir; I apprehend our safety is in holding fast to all parts of the Constitution, whatever they may be, where by experience of twenty years no serious objection has been raised to them; and the only ground upon which, as I understand it, a proposition to amend can well arise is in regard to the question of bribery, which belongs in another portion of the article as reported by the Committee. With this single one, and that is the change of the right of suffrage from a portion of the colored men of the country to the whole body as a class, removing the property qualification, which has been retained as to them but abrogated as to white men. Now, sir, aside from that, it seems to me there is nothing which we should part with in the old or interpolate in the new; and I am in favor of the amendment of my colleague [Mr. C. C. Dwight], because I know what that is, and everybody in this house knows it as I do.

Mr. ANDREWS—I understand from the amendment that has been submitted by the gentleman from Fulton [Mr. Smith] that he intends to retain that feature in the report of the committee, which provides that there shall be a citizenship of thirty days before a person shall be entitled to vote; but for the purpose of obviating the objection that has been made by some gentlemen in the house, to the effect that such a position would deprive certain individuals, acting upon the faith of the present Constitution, who declared their intentions in 1866, of the privilege of voting in 1868, he provides in substance that after the first day of January, 1869, that a citizenship of

thirty days shall precede an election: What I desire to state is, that in my judgment the amendment would be improved by inserting the permanent qualification, to wit: thirty days' citizenship prior to the time of an election in the affirmative and substantive part of the article, and then by the proviso limit the application of that provision to such persons and to such elections as should occur after the first day of January, 1869, so that when the time had been reached when a uniform citizenship of thirty days should be required, the body of the Constitution in its affirmative part would show the permanent qualifications of electors. And I would suggest to the gentleman from Fulton [Mr. Smith] whether it would not be better that the amendment in the first place should provide, as in the report of the committee, that every man of the age of twenty-one years, who shall have been an inhabitant of this State for one year next preceding the election, and for the last thirty days a citizen, etc., shall be entitled to vote, and then make a second proviso, following the first one reported by the committee, in some such language as one which I have drawn: "Provided also that until the first day of January, 1869, a citizen who shall have been a citizen for ten days, and is otherwise qualified, shall be entitled to vote." I think this certainly would improve the language of the section. I agree with the gentleman who last addressed the committee [Mr. Rathbun] that it is best to retain, unless there is to be some change in the substance, the language of the existing Constitution. Now, sir, the Constitution of 1846 declares that every male citizen possessing certain qualifications shall be entitled to vote. The report of the committee declares that every man of the age of twenty-one years who shall for the last thirty days have been a citizen of the United States shall be entitled to vote, adding to the qualification of citizenship, in the present Constitution, the words "of the United States," thus determining, if this amendment shall be adopted, that only a person who is a citizen of the United States shall be entitled to vote. Now, I suggest, Mr. Chairman, that there is a doubt, and possibly that there may be a difficulty arising from this change of language, because while it is the undoubted right of every State to declare who shall be citizens of that State and who shall be entitled to vote, there has been at least a question made, and so far as judicial adjudication can have determined the matter, it has been determined that colored men are not citizens of the United States. They are citizens of this State for the purpose of suffrage, they are so defined and declared to be in the existing Constitution. By several of the statutes of the State, negroes are called citizens of the State. But it will not have escaped the recollection of the committee that this precise question, to wit: whether free negroes of African descent are, under the Constitution of the United States, citizens of the United States, was determined in the case of *Scott v. Sanford*, which is reported in 19 Howard's U. S. Reports, by the *dicta*, at least of Judge Taney and the judges who assented to the prevailing opinion

in that case, it was declared that colored men, the descendants of slaves, were not entitled to the rights or privileges of citizens of the United States. The same decision was made in 1833, in the State of Connecticut, in an opinion pronounced by Chief Justice Daggett of that State, and you will also remember that as late as 1856, Mr. Marcy, the Secretary of State of the United States, refused a passport to a colored man—a free man—on the ground that by adjudications he was not a citizen of the United States, and hence was not entitled under the law to a passport from that department. I know, Mr. Chairman, that the civil rights act of 1866 declared that all persons born within the country were citizens of the United States and also citizens of the State in which they were born; and I do not doubt myself that the law is, that birth upon the soil entitles one to the rights as well as imposes upon him the duties of citizenship, and I doubt not that the present supreme court, if that question should again come before it for adjudication, would thus hold the law to be; but the ground upon which Congress made this declaration has been questioned by high authority, and the same case to which I have already referred clearly shows by the statement of the judges that, in their opinion, there was doubt as to the right of the United States to declare, by act of Congress, who were citizens of the United States, and, as I understand, the pending amendment to the Constitution of the United States, which has been adopted by the Legislature of this State, was made to cover this precise difficulty. Section first declares that all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. If that amendment shall become a part of the Constitution of the United States, then of course the language of the committee would be entirely appropriate, and even if there is no great doubt as to the scope and effect of the legislation of Congress in the civil rights bill, it seems to me that at all events it is unwise to change the language of the present Constitution, which will give occasion at least to cavil as to the real meaning of the clause which may be adopted if the language of the committee shall be followed. I therefore hope, sir, that the language of the Constitution of 1846 in this respect will be followed, and that citizens shall be declared to have the right to vote without attempting to define a limit to citizenship by the words to which I have referred.

Mr. KRUM—It is not my intention now, sir, as I have not done heretofore, to occupy much of the time of this committee in discussion; and in discussing the amendment of the gentleman from Fulton [Mr. Smith], with the mere hearing of it as read by the Secretary, it is difficult indeed to determine fully what that amendment is. There are some things, however, that I gather from the amendment, and others that I gather from the statement of the gentleman from Fulton [Mr. Smith] himself, to which I am decidedly opposed, and for one I desire to enter my protest against it. I am in favor of everything that has a tendency to purify the elective franchise. I am in favor of

dealing everything that has a tendency to destroy that purity its death-blow; and if its death-blow cannot be struck I would deal it such a one as that under it it should at first stagger and afterward fall. I am in favor substantially of the report of the Committee on Suffrage with regard to this question—that portion of the report which makes it a ground of challenge at the polls, applying equally to the person who buys as to the person who receives or sells. But I am opposed to that portion of the amendment of the gentleman from Fulton [Mr. Smith] which seeks to convict the person of bribery who sells his vote, and at the same time permits to go “scot-free” the individual who buys the vote. And I do not agree with him, sir, that the individual who purchases is less guilty than the individual who sells. The individual who sells his vote, or the individuals who sell their votes, are usually individuals of limited means, limited intellect, and who use the selling of their votes as a means of relief somewhat from temporary necessity. I would not make them criminals and permit at the same time the man with his pockets filled with money, the man with the intellect more fully developed, with the mind more fully expanded, to introduce not only the argument of a superior intellect, but the argument also of his money. I would make the man who buys the vote equally guilty with the individual who sells the vote; I would not offer a premium to the man who has the funds to make the purchase while they inflict a crime upon the individual who sold. I, sir, would make them both equally guilty, and I would make the selling of the one or the buying by the other equally the crime of bribery, and I would equally disfranchise both. This, sir, in my opinion, is the only way to reach the difficulty complained of. If the individual who, as a man, is permitted, without the fear of the law, to ply his vocation and make his temptations and induce the poor man to sell, who is there here to complain, who is there even to enforce the law? Is it the poor man who has received the money? Certainly not, for he knows that the moment he opens his mouth he convicts himself, while he permits the individual who has bought his vote to go free. I believe these men, sir, generally, who use money, are men of intelligence. Those men know, if you put the enactment in the Constitution making them both equally guilty, that the very moment they offer the temptation, the very moment they seek to purchase, the very moment they make the proposition, the very moment they try to corrupt, that moment they lay themselves open to conviction for bribery, and disfranchisement forever. The fear of the law, the terror of the punishment, will induce them not to make the proposition, and by that means you let the poor man, the man who usually sells, escape the temptation which otherwise is to be thrust upon him. And while I believe that bribery should be punished by disfranchisement, I believe that it should be punished in such a way as that, by the terror of the Constitution itself the very proposition which we submit to the people, and which will pass triumphantly, should be as effectual as possible to remedy the evil. I am not in a position, without the amendments be-

fore me, to make such amendments (if they were in order) as I would like to make but generally I have stated my views. I would permit both persons to be witnesses; nay, more, I would compel them to be witnesses, and while I state that I would compel them to be witnesses I am aware of the provision in the Constitution of the United States which prohibits any person from convicting himself. But there is nothing in the Constitution, either in the State of New York as it now stands, or in the Constitution of the United States as it now stands, which prohibits or renders incompetent from being a witness, an associate in crime. If an indictment should be preferred against the individual who bought, under our law, as it now stands, the individual who sold might be a witness. The objection that he was an incompetent witness would be of no avail, and he would be sworn; but the moment that you sought to prove by him that he had sold his vote to the individual who was indicted, that moment he would claim his privilege on the ground that it would tend to criminate and disgrace him. I would so frame the fundamental law (and I think the amendment of the gentleman substantially does that, as far as it goes), that the objection by the witness himself, or by his counsel, that the answer to the question would tend to criminate or disgrace him, should not be entertained.

Mr. SMITH — Will the gentleman allow me to interrupt him? Those very provisions are in the amendment, if the gentleman will read it. It provides that both parties may be witnesses, and that their evidence may be used in any criminal prosecution against them.

Mr. KRUM — I thank the gentleman for the suggestion. My statement already made, with reference to it, grew out of the fact that from the hasty reading from the desk of the Secretary, I did not understand it; some such amendment should be made, and if you make the application of disfranchisement equally to the person who buys as to the person who sells, I think we will remedy the evil, and the terror of the law will prevent its violation. The gentleman from Fulton [Mr. Smith] offered some amendments to that portion of the report of the committee relating to challenge at the polls for bribery, etc. Without the language of that amendment before me (and I desire to call the attention respectfully of the gentleman from Fulton [Mr. Smith] to it), I am fearful that the language in it goes so far as to prevent the necessary expenditure of money to excite the people to the performance of their duty to vote, to attend the polls. If it does not, then I would leave the amendment in that regard as he has it; but I would be cautious with reference to the amendment in that particular, that nothing may be incorporated in the Constitution that will prevent the necessary and proper awakening of the people, the use of the necessary funds for political meetings, and the use of the necessary funds to procure teams and bring out voters. I do not know that the amendment offered by him goes so far as to deprive them of that right, but as I gather from its hasty reading I fear it does. I would guard against that.

Mr. FULLER — I think sir, there should be very great care taken in adopting the amendment



proposed by the gentleman from Fulton [Mr. Smith]. A fundamental law is a very solemn and important instrument. We shall have no opportunity to amend it again for perhaps twenty years to come. It is important, therefore, that not only every phrase but every line and every word of any amendment which we shall adopt should be carefully weighed and considered. There is no opportunity and there will be no opportunity afforded us to give the amendment offered by the gentleman from Fulton [Mr. Smith] that careful consideration which the importance of the subject deserves and demands. I have listened to it with all the attention that I was able to give it, and I have as yet, sir, a very imperfect understanding of it; and for that reason, if for no other, I shall be compelled to vote against it. I have before me the report of the Committee on Suffrage, and I can understand that. I can offer amendments to it if I desire. I have also the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] before me in print. I can understand that. I have given to it a careful consideration, and I believe it is better than the original proposition of the Committee on the Right of Suffrage, and I shall vote for it accordingly. But so far as I do understand the amendment of the gentleman from Fulton [Mr. Smith] I am opposed to some of its provisions. In the first place I am opposed to that provision in relation to idiots and lunatics, not because I am in favor of their voting, but because I believe that a provision of that kind would be of no practical value if inserted in the Constitution, because I believe there is no practical evil in that regard which we are called upon to remedy. In the next place I am opposed to any new restrictions on the right of suffrage, and accordingly I am opposed to any new restriction upon the right of adopted citizens to vote. I am opposed in that regard not only to the provision sought to be inserted by the Committee on the Right of Suffrage, but also to the modified form of that provision, which the amendment of the gentleman from Fulton [Mr. Smith] contemplates. I do not believe there is any necessity for any change in the Constitution in this respect. I am in favor of the four months' provision, but I am unwilling to put any new restrictions on the right of adopted citizens to vote. I belong to what is called the majority of this Convention, and I know that adopted citizens, as a general rule, vote in a body, almost in solid column, against the party to which I belong; yet in the consideration of this subject I trust I am able to rise above considerations of partisanship. I am opposed to putting new restrictions upon them. I shall therefore vote against not only the report of the committee requiring a thirty days' citizenship, but I shall vote against the amendment of the gentleman from Fulton [Mr. Smith], and I shall vote for the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight], and accepted by the gentleman from Ontario [Mr. Folger]. I believe that we had better adhere to the Constitution as it is, except so far as experience has clearly demonstrated it needs amendment.

Mr. KRUM—I would like to ask the gentleman a question. Would you not put some clause in

the Constitution in reference to corruption at the polls?

Mr. FULLER—Yea, sir.

Mr. KRUM—And in reference to disfranchisement for bribery?

Mr. FULLER—Yea, sir; and the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] contemplates that; and if that part of the amendment offered by him is not sufficient I am prepared to go further than that in that respect, but in other respects this article calls for no amendment, and experience has not demonstrated it needs any except by striking out the property qualification for colored voters, and I am most decidedly in favor of striking that out, but I will not detain the Convention in giving any reasons for it now, as it has been already so fully discussed.

Mr. BICKFORD—I would inquire of the Chair whether if this amendment proposed by the gentleman be adopted, it will take the place of the amendment offered by the gentleman from Cayuga.

The CHAIRMAN—The Chair is of opinion it would.

Mr. BICKFORD—With that understanding I wish to call the attention of the committee to a matter which is of considerable importance in relation to the ease of conducting elections in which this amendment and also the report of the committee is in a great degree preferable to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight]. Under the report of the committee and under the amendment of the gentleman from Fulton [Mr. Smith] there will be but one box needed, as only one ballot will need to be given; because if a man is a voter at all he is a voter for every officer to be elected. Under the Constitution as it now is, as copied by the gentleman from Cayuga [Mr. C. C. Dwight] in his amendment, it will be necessary to have a multiplicity of boxes and a multiplicity of ballots, and the electors cannot vote near as fast, and there will be a great inconvenience attending it; and for that reason it is highly desirable that the main features of the report made by the committee should be adhered to rather than the present Constitution, which makes a multiplicity of boxes and ballots necessary. I merely call attention to that fact, as nobody else has mentioned it, and it seems to me to be a matter of considerable importance.

Mr. OPDYKE—I desire to say a single word in reference to the last clause of the amendment offered by the gentleman from Fulton [Mr. Smith], that clause which is designed to suppress corruption at the polls. If I have correctly apprehended it, it is this: that he proposes to punish the party selling his vote and proposes to exculpate the party purchasing it. He also proposes to bring them both upon the witness stand, but not to hold them liable to punishment for any facts that may be developed in their testimony. Now, sir, I think there is no more important duty that this Convention has to perform than to make an honest, earnest effort to purify the ballot. It is the very foundation of our political power, and if that be corrupted the whole superstructure will be corrupted. For myself, I think I would prefer to hold them both liable, and



punish both parties, and also to bring them both upon the witness stand and to render them responsible and liable to punishment for the facts which they themselves may state. The gentleman in front of me [Mr. Krum] has said that the Constitution of the United States stands in our way. I beg to remind the gentleman that he is mistaken on that point. Doubtless most of the members of this Convention know that that prohibition simply relates to the power of the government of the United States. We have a perfect right to put in our own Constitution a provision compelling offenders against the law to take the witness stand and bear the consequences of the testimony they there may be compelled to give. Therefore in regard to offenses of this nature, the selling and the purchasing of votes, I would hold them both liable to punishment—the party selling his vote I would disfranchise forever; the party purchasing, such punishment as the Convention or State through its Legislature in its wisdom may decide. But I would punish both. I hope therefore that an amendment similar to the latter clause of that of the gentleman from Fulton [Mr. Smith] will meet the favor of the Convention.

Mr. SKYMOUR — I would inquire whether the question is not upon the first proposition of the amendment offered by the gentleman from Fulton [Mr. Smith].

The CHAIRMAN — The Chair understands the gentleman from Kings [Mr. Barnard] called for a division, and therefore the question will be upon the propositions separately.

Mr. SKYMOUR — The first part of the proposition of the amendment of the gentleman from Fulton [Mr. Smith], as I understand it, relates to the citizenship in general terms, and the residence of the person who is to vote. I think it would be very unsafe for this committee, without having had the opportunity of critically examining the language in which this proposition is presented, to adopt it. I have looked at it and compared it with the proposition proposed by the gentleman from Cayuga [Mr. C. C. Dwight], which is known to the committee to be the present Constitution on this subject. And as was remarked by his colleague the gentleman from Cayuga [Mr. Rathbun] just now, it is highly important that we should retain as far as possible the language of the present Constitution on every subject. We have that language before us; it has stood the test for twenty years; it has been examined and re-examined by the ablest minds in the State, judicial and otherwise, sometimes receiving judicial construction from our highest tribunals, and I do not desire in any particular to depart from that instrument unless it be necessary to make an amendment to cure some existing evil. Now I understand that in this proposition no provision is made with regard to preserving the purity of elections. Such a provision can be added as a separate proposition to the amendment of the gentleman from Cayuga [Mr. C. C. Dwight], and then we shall have it in a distinct and definite form which we can understand. There are, it strikes me, some important differences in the language of the proposition of the gentleman from

Fulton [Mr. Smith] from that of the gentleman from Cayuga [Mr. C. C. Dwight]. The proposition of the gentleman from Cayuga [Mr. C. C. Dwight], which is the present Constitution, requires a residence for some period in the *county* where the election is to be had, and where the voter seeks to give his ballot; there are a large number of officers elected by counties, and it is very proper and very important, in my view, to have a residence in the county, as has always been required, still continued to be required. I hope we shall therefore adhere to this proposition. This, I understood the Chair, is to be put by itself. It is a part of the proposition presented by the gentleman from Cayuga [Mr. C. C. Dwight].

Mr. GRAVES—I understand the proposition now before the Convention is the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight], which in language or in effect, if not in precise language, is like the old Constitution, and the amendment offered by the gentleman from Fulton [Mr. Smith], differs in some material points from that. I have not been able to learn, sitting here, what that precise difference is. I do not see the wisdom, Mr. Chairman, of changing the original Constitution so far as regards the qualification of citizenship. I have heard no complaint of that in the rural districts. The question seems to be well settled. We know precisely how to understand that part of the Constitution. Is it wise or proper for this Convention to make a new provision in that particular, when this one is so well understood? The necessities of the people do not require it; some misconception may be given to it, and we shall not be as well off in that change of the Constitution as we are under the old; therefore, let us abide by the old until time and experience satisfies us it is necessary to make a change.

Mr. CONGER—I would like to inquire of the gentleman from Fulton [Mr. Smith], if in preparing his amendment he has considered the question whether the limitation of the right of citizens for ten days does not come within the purview of the new amendments now pending, supposed to be about passing. Article 14 of amendments to the Constitution, if I understand it in its plain significance, forbids any abridgment of the right of a citizen of the United States to vote at any election. The phraseology is this:

"But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any wise abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

Now, I wish for information, supposing that the gentleman has given this question a quasi-judicial investigation. I wish to know whether the limitation that he proposes of ten days for the present, and thirty days in the years to come, of the right

of a naturalized citizen, or of a citizen who becomes twenty-one years of age but one day prior to the day of election, does not abridge that right by the rule which he lays down? I suppose it is the intention of the majority of this Convention to adhere not only to the spirit but to the true meaning and interpretation of the article, and not to undertake to evade it or abridge the right simply on the ground that they are willing to abide by the penalty imposed by Congress in the article. I think the question is one of grave import, and as I have not examined it carefully, I would like to have an advisory opinion upon it.

Mr. SMITH — I would say, for the information of the gentleman, that I have made no special investigation of that question. My object, as I stated before, was mainly to provide for purifying the elective franchise; and, looking at the report of the committee and comparing it with the amendment offered by the gentleman from Cayuga [Mr. C. C. Dwight], I preferred the provisions of the original report, and took that as a basis. I have given no special examination to the other clauses of the section, and did not intend to change it materially, but simply to add such provisions as would effect the purpose I had in view. Perhaps this will be a sufficient explanation.

Mr. BURRILL — The remark which has been made by the gentleman from Rockland [Mr. Conger], and the interrogatory put by him to the gentleman from Fulton [Mr. Smith], present a question which this Convention must at some stage pass upon, and I had supposed that full consideration had already been given to that subject by those members of this Convention who are prepared to vote in favor of the report of the committee as amended by the gentleman from Cayuga [Mr. C. C. Dwight]. The question put by the gentleman from Rockland to the gentleman from Fulton was whether or not he had considered the effect of the proposed fourteenth amendment to the Federal Constitution, dated June, 1866, and which it is claimed has been adopted by some of the States. The amendment referred to prescribes a penalty for restricting the right of a citizen of the United States to vote in a State at any election for the choice of electors, representatives in Congress, executive and judicial officers of such State, and for members of the Legislature thereof, and declares that any restriction or abridgment of the right of suffrage which may be imposed by any State shall be followed by an abridgment of the right of such State to representation in the Federal Congress and by the reduction of that right of representation in the same proportion which the number of male persons so deprived of the right to vote shall bear to the whole number of male citizens twenty-one years of age in such State. I suppose that every man who votes in this State for any office within the gift of the people of the State votes not by virtue of any citizenship of the United States, but votes by virtue of his citizenship and as a citizen of the State of New York, and that this Convention, as representing the people has the right to restrict and limit such right to vote in such manner as it may deem wise or expedient, and that the right of this State in that regard cannot be interfered with. It is true, sir, that under the proposed 14th amend-

ment to the Federal Constitution already referred to, all persons born or naturalized in the United States are declared to be citizens of the United States. It is true also that in that amendment there is held out the idea that a citizen of the United States has the right as such to vote for officers in the State of New York. As I have already said, in my judgment every person who votes for an office within the gift of the people in this State votes not as a citizen of the United States but as a citizen of the State of New York, and in my opinion the people of this State have the right to deny to citizens of the United States as well as to all other persons the right to vote in this State except under such restriction and qualification as they may choose to impose and require. If the intimation thrown out by the gentleman from Rockland [Mr. Conger] that all persons, male citizens of the United States as such, and by virtue of such citizenship will be entitled, under the amendment referred to, to vote in this State, the labors of this Convention will be entirely useless. On such principle our work will be of no avail, because we are here for the very purpose, among others, of prescribing the conditions upon which individuals shall vote in this State, and the report of the Committee on Suffrage as originally reported, and the same report as it is proposed to be amended by the amendments of the gentleman from Cayuga [Mr. C. C. Dwight], and also by the amendments proposed by the gentleman from Fulton [Mr. Smith], prescribe that citizens of the United States shall be restricted, and limited in regard to their right to vote, and that they shall not vote except under the restrictions and qualifications in such report contained. There is no force whatever in the point suggested by the gentleman from Rockland [Mr. Conger]. I claim and insist that we have the right to prescribe for ourselves what persons shall be admitted to membership in the society or community in which we live; in other words, who shall be admitted to be citizens of this State, and also to prescribe the terms and conditions upon which such persons shall be so admitted. I submit, that the action of this Convention in thus acting upon the question of suffrage is perfectly proper, and that we are in the right line of our duty. We and we alone have the right to prescribe upon what terms persons whether they be in name or in fact, citizens of the United States, shall exercise the right of voting in the State of New York; and I hope that no one in his action in this Convention will be influenced by the consideration that we are trenching upon a right which is or will be accorded by the proposed fourteenth amendment of the Federal Constitution to persons thereby claiming to be citizens of the United States. We should declare and act upon the principle that the people of this State and we as their representatives have the right to prescribe and impose limitations, qualifications and conditions to the right to vote, and that all who desire to exercise that right within the limits of this State must do so as citizens of this State and not as citizens of the United States.

Mr. CONGER — With regard to the interpretation as given at this time, I do not, having admitted that I had not been able to give this

question a thorough examination, undertake at this time to say what I think should be *ex cathedra* the interpretation to be given to it. But I fear that no gentleman will be able to dispose of this question so readily, for, in the first place, all these persons who are declared to be citizens of the United States are also declared to be citizens of the State in which they reside, and there is no opportunity for any discrimination between a person as a citizen of the United States and a citizen of the State in which he resides. The fact of his being a citizen of the United States under the Constitution, and as by that article of the proposed amendment, and coupled with the fact that he is residing in the State, makes him a citizen of that State if I understand the force and meaning of that term. Now, when you come to the second article, it is clearly the intention of the supreme law of the land to set down a rule by which persons may vote, although it is stated as an alternative between obedience to the law and paying a penalty for disobedience, yet I apprehend if the question comes before the highest tribunals, the courts would be obliged to say that the United States, in prescribing the qualifications of its citizens for the purpose of exercising the electoral vote, should in good faith maintain the rule in accordance with the rule laid down, otherwise they would be obliged, it seems to me, to hold that the setting forth of the rule was merely a setting forth of the penalty, and that the insertion of the penalty was nothing more than an appendage to a rule that could be violated. No fair interpretation of the Constitution, it seems to me, can ever be given by a tribunal discussing or deciding upon this question dispassionately. I have a difficulty in my own mind with regard to the amendment I propose to submit at some future stage in the discussion of the committee, and I wish very conscientiously and carefully to avoid anything like an infraction of the rule laid down; still I think sooner or later this question must be discussed by some of the abler minds accustomed to deal with constitutional questions in this Convention. I apprehend they must tell us clearly and unequivocally that it was the intention in the article to lay down a clear and uniform rule by which citizens should be entitled to vote as citizens of the United States primarily, and citizens of the State in which they reside, secondarily; but to vote by a uniform rule, and that rule to be preserved. Now, I state so much because I wish light and a true interpretation, and because if the light come in time it may very materially vary some of the propositions I desire to submit. But I cannot think the honorable gentleman from New York [Mr. Burrill] has not yet set forth the question with that care which would enable him to say that it was the intention of the framers of that amendment to allow a State to discriminate as to the qualifications of its own citizens in the right of elections, as against citizens of the United States under the Constitution, for if the States have got that power under that article I would like to know what it is worth.

Mr. PROSSER — I propose to strike out ten, and insert thirty.

The CHAIRMAN — The Chair will inform the gentleman that two propositions are now pending.

Mr. BARKER — Suppose the proposition is voted down, and the committee adopt the resolution of the gentleman from Cayuga [Mr. C. C. Dwight], will it be in order to move to amend that part of the section by inserting thirty days in place of ten?

The CHAIRMAN — The Chair is of opinion that the committee have it in their power until tomorrow night at half-past seven o'clock to amend the proposition as many times as they please.

Mr. ROBERTSON — I would like to move an amendment if it is in order.

The CHAIRMAN — The Chair has informed the gentleman on the opposite side of the house [Mr. Prosser], and will now inform the gentleman [Mr. Robertson] that no amendment is now in order.

Mr. GOULD — I should just like to inquire one thing; whether this amendment of the gentleman from Fulton [Mr. Smith] takes place before the 1st of January, 1869.

The CHAIRMAN — It is after the year 1868.

Mr. GOULD — Then it cannot be before the 1st of January, 1869.

The question was then put upon the first part of the proposition of the gentleman from Fulton [Mr. Smith] which was declared lost, on a division, by a vote of 20 to 85.

Mr. BICKFORD — Is the whole amendment lost?

The CHAIRMAN — The Chair will inform the gentleman that a division having been called for only one-half of the amendment is lost.

The CHAIRMAN announced the question to be on the second portion of the proposition of the gentleman from Fulton [Mr. Smith].

Mr. RATHBUN — I wish to inquire whether that section now read is offered by way of amendment to the section offered by the gentleman from Cayuga [Mr. C. C. Dwight], or whether it relates to a subsequent section in the report of the committee?

The CHAIRMAN — The Chair is of the opinion that it is an amendment to the proposition of the gentleman from Cayuga [Mr. C. C. Dwight], and cannot be intended in any other way.

The question was then put on the second part of the proposition of the gentleman from Fulton [Mr. Smith], which was declared lost.

The question was then put on the third part of the proposition of the gentleman from Fulton [Mr. Smith], which was declared lost.

Mr. DUGANNE — I offer the following amendment:

The SECRETARY proceeded to read the amendment as follows:

Insert at close of first section:

And the Legislature may provide that, in the registration of voters, no person shall be registered who has been twice convicted of felonious offenses in any court of the State, and who thereafter, at the time of registration, shall be notoriously, professionally and persistently engaged in the violation of criminal laws and in sharing the profits of felonious practices and pursuits.

Mr. DUGANNE — Before any action is taken upon that resolution I wish to say a few words. It may not be known, but it certainly ought to be known, by gentlemen who represent the city of New York, that there is a large class, a very



large class, a class large enough to sway the elections of New York, who are professionally engaged in violating the laws of the State. There are on the books of the police in the city of New York men who are known and registered as professional law-breakers, thieves, and other notorious criminals, men who are engaged from one year's end to another in violating and defying the laws. Every vote of one of these is a threat to a corrupt legislator, or a bribe to an unjust judge. It is well known, and I need only refer to the police records, I need only refer to the commissioners of the police in the city of New York, that there are at least twenty-five hundred men known as violators of law, who at every election, vote on the average four times each, and who, therefore, have the power of swaying ten thousand votes against the civilized and virtuous portion of the community. Now, Mr. Chairman, it may be very proper to exclude the pure and virtuous woman from a share in the administration of our political affairs; it may be very magnanimous to prevent the man, whose only misfortune is his poverty, from sharing in the ballot, and in the administration of public business; it may be proper to make other restrictions—but, gentlemen, I ask you whether it is not more necessary, more vital to the existence and permanence of a virtuous commonwealth, that these criminal classes who are known, who are convicted, who are professionally reputed and believed to be violators of law, and to be always engaged in a raid and a war against society, should be deprived of the power to outweigh, by their votes, the good and virtuous men in society? I appeal to the good sense, I appeal to the morality of every gentleman on this floor, if we are not in danger of corruption, if we are not suffering from corruption every day and every year of our lives in those great cities where the ballot box as has been said by one of the gentlemen, the chairman [Mr. Greeley] of the Suffrage Committee, is in danger of becoming a "spittoon," but where, in my opinion, the ballot box is in danger of becoming a source of poison to the whole community. I do not wish this question slighted. I will not have it slighted on this floor. It is a more vital question than many on which we have expended torrents of eloquence; it is a question which goes home to every moral man, to every christian. There are men in the city of New York, who are engaged in demoralizing the whole community, keepers of notorious establishments, which are fountains of corruption for the youth of our land; there are men who are engaged and are sharing in the ill-gotten gains of gambling, men who hold out their lures and rivet their temptations on the young men not only of the city but of all the State—I say these men should have some check upon their powers in the State. If we cannot wholly deprive them of those powers, why, at least, we should refuse them a registry at such time as they are known, positively and notoriously known, to be engaged in breaking laws. I ask, Mr. Chairman, that this question be not passed over in silence, or by the mere action of a rising or a *viva voce* vote. I wish gentlemen to discuss it. If there are gentlemen who fear those men's votes I want to know it. If they have champions on this floor I want to see them.

The question was then put on the proposition of the gentleman from New York [Mr. Duganne], which was declared lost.

Mr. ANDREWS—I offer the following amendment to the proposition of the gentleman from Cayuga [Mr. C. C. Dwight].

The SECRETARY proceeded to read the amendment as follows:

Strike out "ten" in the second line and insert "thirty."

Also, "of the United States," in line three.

Also, add at the end of the first section as follows:

*"Provided also, That until the first day of January, 1869, a citizen who shall have been a citizen for ten days, and is otherwise qualified, shall be entitled to vote."*

So that the first section shall read as follows:

Every male citizen of the age of twenty-one years, who shall have been for thirty days a citizen and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county where he may offer his vote shall be entitled to vote at such election in the election district of which he shall be at the time a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election a resident of the district from which the officer is to be chosen for whom he offers his vote.

*Provided, That in time of war no elector in the actual military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the State; and the Legislature shall have power to provide the manner in which, and the time and place at which such absent elector may vote, and for the canvass and return of their votes in the election districts in which they respectively reside, or otherwise.*

*Provided also, That until the first day of January, 1869, a citizen, who shall have been a citizen for ten days, and is otherwise qualified, shall be entitled to vote.*

Mr. FOLGER—Is it in my power to accept that amendment?

The CHAIRMAN—It is the opinion of the Chair that it is in the power of the gentleman from Ontario [Mr. Folger] to accept it.

Mr. FOLGER—I wish to accept the amendment, not that I coincide with every phrase in it, and will vote for some amendment that will alter some portion of it, but for the sake of hastening the proceedings; and inasmuch as this amendment meets the difficulty set forth by the gentleman from Onondaga [Mr. Andrews] in his former amendment, I accept it.

Mr. McDONALD—I offer the following amendment.

The SECRETARY proceeded to read the amendment as follows:

Strike out all of the remainder of first sentence after the words "district from which," etc., and insert instead, "the election district in which he offers his vote."

Mr. McDONALD—The only change that this makes is to strike out the clause with regard to which there has always been some controversy, as follows, to wit: "And such citizen who shall



have been for thirty days next preceding the election a resident of the district in which the officer is to be chosen for whom he offers his vote." It will be altered so as to read as follows: "But such citizen shall have been for thirty days preceding an election a resident of the election district in which he offers his vote." It changes the clause as it now is, which requires that he shall be a resident of that district in which the officer is to be chosen, to a clause which simply requires that he shall be a resident of the election district in which he offers his vote. The only object I have is to present the question which is presented by the report of the committee, to wit: that any person who votes shall have been for thirty days a citizen resident of the election district in which he offers his vote. That is the object of the amendment.

Mr. FOLGER — Why do you want it?

Mr. McDONALD — I am asked why I want it. The reason I want it is this: in order to protect and *determine* who are voters. If we require, as we propose to, that a person shall be a citizen for thirty days, we should also require that the person shall be a resident of the district for thirty days. We have heretofore determined who are voters by registry and otherwise. In this way we can determine by the registry whether a person is a voter or not. I am aware that it sometimes deprives a person if he moves from one election district to another. But, let me add, the same objection also is made to the requirement of four months' residence in a county; and, as far as I know, that rule deprives more men of voting than a residence of thirty days in an election district would. I want it for the same reason that the former Constitution requires a residence of four months in the county and one year in the State. Simply, so that there may be *time* and opportunity to regulate and *determine* who are voters.

Mr. C. C. DWIGHT — The amendment offered by the gentleman from Ontario [Mr. McDonald] would be entirely inconsistent with another part of the article he seeks to amend, to which his attention cannot have been called, which provides, in the language of the present Constitution, that every such person as is described in the first part of the section shall be entitled to vote at such election in the election district of which he shall at the time be a resident and not elsewhere. It requires no precedent residence in the election district, but authorizes a man to vote where he is an actual resident. It simply requires a thirty days' residence in the official district, if I may so express myself—that is, in the district in which and for which the officer for whom he offers his vote is to be elected. That is, if a man lives in an election district in the first assembly district of Cayuga county, and he moves into another election district in the same assembly district, he can vote still for member of Assembly. But if he moves from one assembly district to another assembly district, he is deprived of his right to vote for member of assembly, because the Constitution requires a thirty days' residence in the district in which the officer is to be chosen for whom he offers his vote. The object of that is to prevent the "colonization" of voters, as it is called,

from a district in which a party may be strong into a district where it is weak.

Mr. COMSTOCK — I regard the amendment offered by the gentleman from Ontario [Mr. McDonald] as very immaterial, and I do not think it ought to prevail. It requires, if I understand it, that a voter shall for thirty days be a resident in the election district where he offers his vote. Now, with the other provision to be incorporated into the article on the elective franchise, there seems to be no reason for that requirement. A man the day before the election moves across the street. That is no reason why he should not vote for alderman so long as he is in the same aldermanic district. This is not colonizing a voter. He is still in the same official district. So a man may move across the highway the day before a town meeting, and thus find himself in another election district; but he is still in his town. Is that any reason why he should not vote for supervisor or for justice of the peace of his town? I apprehend not. He may move a short distance, but not out of his assembly district, just before the last day of registration. That, I think, is no reason why he should not be registered in his new election district and vote for Senator or for Governor or for Lieutenant-Governor. Such is the meaning of the Constitution as it now is, and such is also the meaning of the substitute offered by the gentlemen from Cayuga [Mr. C. C. Dwight] and I think it ought to remain so, and that the amendment proposed to the substitute should not prevail.

Mr. GREELEY — The reason of requiring a thirty days' residence is because in one case the voter is in a district where he is known, and in the other case he is in a district where his right to vote is totally unknown. It seems to me that an elector may delay by one day his moving in order to save to himself the right of suffrage and not move on the morning of election or within three or four days of election. We cannot in the great city of New York tell who is entitled to vote. If a man may say "I will just move into this district this morning and have my name put on the registry," you will have gigantic frauds so long as you have men who move into a district where you do not allow time to have their claim to vote properly scrutinized. If you do not have that time, you simply allow a man to go into a district immediately before election, by some means get his name on the registry, and thus defraud the legal voters out of their rights. It is notorious that there are at election times what are known as "repeaters,"—men who make it a business to go around and vote in different election districts and are paid for doing so, and this provision reported by the committee is intended to cut them off.

The question was then put on the amendment of Mr. McDonald, and it was declared lost.

Mr. CONGER — Is it in order to offer another amendment?

The CHAIRMAN — An amendment to the amendment is now in order.

Mr. CONGER — I offer the following series of propositions, which I wish to have considered and voted upon separately.

The SECRETARY proceeded to read the prop-

positions offered by Mr. Conger, in words as follows:

"1. Every male citizen who shall have been an inhabitant of this State for one year next preceding an election, and a resident of the election district where he may offer his vote, including every white citizen of the age of twenty-one years, and every person of color who has heretofore been admitted to the elective franchise, shall be entitled to vote at such election in said district, and not elsewhere, for all officers elective by the people.

"2. But no person of color shall ever be admitted to participate in or enjoy the functions of sovereignty in this State, so as to hold any executive, judicial or representative office designated in this Constitution.

"3. Nor shall any person of color, excepting such as have heretofore been admitted to the elective franchise, be entitled to vote upon any Constitution of this State, or any amendment to the same now or hereafter to be adopted.

"The Legislature may if this right be approved by a separate vote of the sovereign electors of this State, admit all persons of color to the exercise of the elective franchise except as above provided."

The CHAIRMAN—The Chair must rule that under the resolution which has been adopted by the Convention the last proposition just read by the Secretary, cannot now be received.

Mr. CONGER—I merely say in regard to that, that the clause was framed before the committee or the Convention had adopted any rule, and secondly, that it proposes to place the matter in the body of the Constitution, and does not provide for any separate submission.

The CHAIRMAN—Does the Chair understand the gentleman [Mr. Conger] to appeal from its decision?

Mr. CONGER—No, sir, I only wish to explain—

The CHAIRMAN—Under the rule adopted, the proposition cannot be considered in Committee of the Whole.

The question was then put on the first proposition offered by Mr. Conger, and it was declared lost.

The question was then put on the second proposition of Mr. Conger, and it was declared lost.

The question was then put on the third proposition of Mr. Conger, and it was declared lost.

Mr. COMSTOCK offered the following amendment:

Strike out in section one the words "for all officers that now are or hereafter may be elected by the people."

Mr. COMSTOCK—The reason of offering the amendment is this: the report of the Committee on the Right of Suffrage defines the elective franchise to be the right to vote for all officers elected by the people. The substitute offered by the gentleman from Cayuga [Mr. C. C. Dwight], now under consideration, uses the same language in that respect, and both follow the language of the Constitution of 1846. Nevertheless I think there is a certain looseness and redundancy of expression which may be very inconvenient in carrying on the government, and may be even mischievous and fatal. Those delegates who were

members of the Legislature at its last session (and I believe there are several on this floor) will appreciate the necessity of this amendment. The question was raised during the session of the last Legislature, as to who could vote for delegates to the Constitutional Convention. The right of suffrage by the Constitution is conferred upon those who could vote for officers of the State—the elective officers of the State. It was said in the discussions of the Legislature that a delegate to the Convention was not an officer of the State, and the question arose with the Legislature whether those persons only who were entitled to vote under the Constitution could vote in the election of delegates, or whether the Constitution was not at all the rule of suffrage in such a case, and whether the Legislature had not the power to say who should and who should not be entitled to vote. I believe I am correct in saying that one house entertained the opinion that the Constitution afforded a rule of suffrage for that occasion. The other branch of the Legislature seemed to be of a different opinion, and the result was a compromise resting upon no principle whatever. The Legislature did not incorporate into the body of the electors any new class, but by the adoption of a test oath it subtracted from the body of the electors another class who were entitled to vote under our present Constitution and laws. As I have said, the right of suffrage was defined in our Constitution as the right to vote for the elective officers of the State. How will the question be when one, two or three years from now an important fundamental amendment to the Constitution of the State shall be submitted to the popular vote. I apprehend that most people, certainly very many people, will suppose that the Constitution will have nothing to do with such elective officers, because the term is "officers elected by the people of this State." Suppose again, that question shall be raised, and it probably will be raised in our day, on our voting for delegates to another Constitutional Convention, what is the rule of suffrage?—what will it be on this most important, fundamental occasion? Will it be controlled by the Constitution, or will it be in the power of the Legislature to say that such men may vote and other men may not vote; will it be in the power of the Legislature to submit the important, fundamental questions which may lie at the very foundation of civil liberty with reference to the suffrage of a class? I suppose it is quite plain that there ought to be an uniform rule of suffrage for all occasions and all times when the popular will is to be consulted, and if my amendment receives the favor of the committee the Constitution will then simply provide that all male inhabitants of this State, having certain qualifications, shall be entitled to vote, not to vote for elective officers merely, but upon all occasions when the will of the people is to be consulted.

Mr. FOLGER—If the gentleman from Onondaga [Mr. Comstock], has clearly stated the point of his amendment, and I think he has, it does not touch the ground upon which the act to authorize the calling of this Convention was sought to be placed by at least one branch of the last Legislature. It is true that it was somewhat discussed,

or hinted at in discussion, that a delegate to this Convention was not an "officer" within the purview of the Constitution as it now exists, and that therefore the Legislature had a right to give the choice of, or give the privilege of voting for, delegates to others than those empowered by the Constitution to vote for officers. But the main ground—I believe the true ground, and the prevailing ground upon which the right of the Legislature to enlarge the body of electors for delegates to this Convention was placed in the Senate of this State, was this: that when we came to the formation of a new Constitution, it was a semi-revolutionary matter; and it was the people, the whole people, who once more undertook the work of reorganizing their fundamental law, and that the *ruling class* that is talked of in this Convention, to my mind so erroneously, was not the only class to be consulted on such an occasion; for it was not in the ruling class, in whom rested the right to rearrange the frame of government, but in the whole people resided the sovereignty and from whom came the right of government, and they were to be consulted as to this new form of the organic law, and it was for them to determine who were to be called together to frame it. It was held that there is not of right a class who alone can rule; that to rule is a privilege conferred. And if a privilege, then it can be recalled by the power that gave it. That power is the whole people, and when a new Constitution is to be formed in which is to be laid down again, to whom shall be given the privilege of ruling, the whole people should be consulted. It was upon this ground, and not upon the narrow ground stated by the gentleman from Onondaga [Mr. Comstock], that a delegate was not an officer. A Constitution is the work of the whole people, and the whole people are to be consulted, men and women, white and black. That was the ground upon which it was put, and that was the ground which prevailed in the Senate of this State, but which did not prevail in the Assembly. There was, therefore, a conference committee between the two houses, and a proposition of the Senate was yielded to secure, as it was thought, other important provisions in the bill. The amendment of the gentleman from Onondaga [Mr. Comstock] does not reach that position; for, if it is true, that in going back to form a new Constitution, we go back to the people as the people, they have the right to say, when they tear up the foundation work of the organization of society, who shall be the workmen. They have the right to be consulted and to take hold and assist in laying the new ground-work. Then nothing in this Constitution, however stringent may be its provisions, will protect and guard against that. Nor is this State lacking in precedent for the action of the Senate last winter. The act of the Legislature under which the Constitutional Convention of 1821 was convened, enlarged the elective franchise for the election of delegates to that Convention, and whereas it was given to a certain confined class before, that act invited to the participation in the formation of that Constitution another and larger class, thus recognizing this principle that it is *the whole people who are to make the Constitu-*

*tion, and not a class, which are falsely called the "ruling class."* There is no ruling class. The men who vote, the '*electors*' as they are called in the Constitution, are but delegates, depositaries, of the sovereignty of the people, and as such they may be called upon to surrender and give up that right to those who gave it temporarily to them. A natural right to vote has been talked about here—a natural right to participate in the government, for both are synonymous, as the only way in which one can ordinarily participate in the government is by a vote. Does the natural right exist in any man from the foundation of the world to rule my action by vote? By no means. There is a natural duty devolving upon every man to rule his own action, but no natural right in any manner to rule the action of his neighbor. It is only by concession and by yielding and convention that any man has the right to vote, and so to control the actions of another man. It was upon this principle that the Senate proceeded, and the amendment of the gentleman from Onondaga [Mr. Comstock] does not reach that principle.

Mr. HALL—I wish to offer a very few observations in support of the amendment offered by the gentleman from Onondaga [Mr. Comstock]. I think it proper for two or three reasons not mentioned by the gentleman who offered it. In the first place, it strikes me that this first section is practically ignored by us in the election of certain officers in the State. The provision of the Constitution is that every elector shall be entitled to vote for all officers that now are or hereafter may be elected by the people. It is known that in this Convention thirty-two members of it who are sitting here were elected not by the votes of the people, for all the people were not permitted to vote for the thirty-two delegates at large, but the vote was confined to sixteen for each of the parties. It may be said that in this case these delegates were not officers, but I don't agree with that. I think, they are in fact officers under the meaning of this section, and the same rule prevails in regard to inspectors of election; three of them are chosen, but each elector votes for only two. And so also with regard to those justices of the peace who are designated to sit as justices of the sessions. Although two are to be elected, the people are not practically permitted to vote for both those offices, but only one. And so with the supervisors of the city of New York the same rule prevails. Therefore, I submit this is a provision that is now practically ignored in our elections in this State. Another reason I would suggest why it should be stricken out is one that perhaps may not commend itself to the majority of the members of this Convention, but which I feel bound to state. I had the honor of introducing a resolution some time since, proposing a division of the electors of this State for the purpose of the election of Senators and members of Assembly, prescribing a different qualification as to length of residence in the election district for voters to the Senate from that which prevails with regard to voters for members of Assembly. Of course, if such a provision should be adopted it would be inconsistent with this present section. But I would submit respectfully that striking out those words will not abridge or practically change the rights of any citizen, and



the effect will be simply that this section will state that every male citizen possessing these qualifications is a voter entitled to vote without showing for what offices he shall be entitled to vote. And if it is stricken out it will not be obligatory upon the Convention to make any distinction such as I mentioned, nor will the motion to make such a distinction render the Constitution inconsistent with itself. Another reason is that oftentimes propositions are submitted to the people not involving the election of any officer—such as the proposition to amend the Constitution, and a vote upon the submission to the people of that amendment. So, frequently other propositions may be submitted to the people which require a vote, and if we construct the section so it will read simply that every male citizen possessing these requisites will be entitled to vote, it will give him the right under the Constitution to vote not only for officers to be elected but upon all propositions of any kind whatever which may be submitted to the people.

Mr. BARKER—I hope this amendment will not prevail. By inserting this provision in the Constitution we take away from the Legislature all power to make the qualifications of voters, and declare that the Legislature shall not say what class of citizens may vote for officers which are to be chosen. It is a guard against party action in the future after the Constitution is adopted. If this amendment prevails, then the Legislature can at any time say what class of citizens may vote at an election. And we shall have the road open for the exhibition that has once been made in this State, that officers may be chosen to discharge high functions without the citizens having the right to vote for or against them. I claim it is in opposition to the elective principle for two men to come before the people, and they not have the power to vote for one and against the other.

Mr. SPENCER—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Spencer and it was declared to be lost, on a division, by a vote of 48 to 48.

Mr. RATHBUN—I rise to call the attention of the committee to the fact that the proposition to strike out in the provision referred to by the gentleman from Onondaga [Mr. Andrews] is a provision which has been in the Constitution for the last twenty years, and we never have had any trouble with it, and I hope we will not try to get rid of it.

The question was put upon the amendment of the gentleman from Onondaga [Mr. Andrews], which was declared to be lost.

Mr. LANDON offered the following amendment:

Strike out all of section 2 of Mr. C. C. Dwight's amendment after the words "dependent upon the result of any election, of the right to vote at such election," and insert the following:

"No person who shall receive, expect to receive, pay or offer to pay, contribute or offer to contribute to another to be paid or used, any money or other valuable thing, to influence or reward a vote to be given at an election, shall vote at such election; and upon challenge for such

cause the person so challenged shall, before the inspectors receive his vote, swear or affirm before such inspectors that he has not received, does not expect to receive, has not paid nor offered to pay, contributed nor offered to contribute to others to be paid or used, any money or other valuable thing to influence or reward a vote to be given at such election."

Mr. LANDON—I simply desire to say that the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] requires the Legislature, or at least devolves the right upon the Legislature, to pass laws excluding from the right of suffrage certain persons who may use money corruptly. I propose to put that in the body of the instrument itself, and the amendment I have submitted is a portion of the report of a majority of the committee with the addition of the words "contributed or offered to contribute to others to be paid or used." It is the identical language of the report of the majority of the committee with that addition. I desire by that addition to strike at those men who contribute money in order to control elections. In close contests it frequently happens that large sums of money are raised by men who have means, and I desire to prevent the system of levying contributions upon persons who sympathize with particular parties, and by that means raising money. Now, if I can charge the contributor and say to him, "You contributed money." I will strike at the evil; I will make that man afraid to give any money, and will therefore prevent any money being raised at the election, and if it cannot be raised it cannot be used.

Mr. POND—There is one little aperture through this amendment, and through the report of the committee, and through the amendment of the gentleman from Cayuga [Mr. C. C. Dwight], it seems to me. They provide against offering money and paying money, but they do not in either of these provisions provide any remedy against a man promising it. Now I think unless they do, the evil will not be entirely obviated. An offer of money and a man's note for it are different things entirely; the cash down or the offer of cash for a vote and a promise to pay it at a future time are different and distinct things; and if it be left so a man can be prohibited from offering money to purchase a vote on the day of an election, yet he may obtain it by a promise to pay at some future time.

Mr. LANDON—The gentleman will find that the amendment contains the words "valuable thing." A promise may be a valuable thing.

Mr. POND—A promise may not be valuable. It would be contrary to law to make one of that kind and legally speaking it would be invalid and worthless, but it may be sufficient to secure a vote, and so also in the report of the Suffrage Committee. If the voter is challenged he must swear or affirm before inspectors that he has not received, does not expect to receive, has not paid nor offered to pay, any money or other valuable thing to influence or reward a vote. Now I submit that a candidate or other person may have promised a man to reward him for his vote and not be obnoxious to the prohibitions of that section.

Mr. OASSIDY—I desire to call the attention



of the gentleman from Schenectady [Mr. Landon] to the fact that there are, I think, provisions in the report of the committee in regard to that subject, and I do so because it is before us printed and so explicit that everybody can understand it. If the language is not precisely what he desires it can be altered by the Convention, but I think this is the best basis upon which to form the amendment. Some considerable care was bestowed upon it. It reads, "No person who shall receive, expect to receive, pay, or offer to pay any money or other valuable thing to influence or reward a vote to be given at an election shall vote at such election;" and it has since been amended by the mover so as to read "given or to be given."

Mr. LANDON — Mr. Chairman—

The CHAIRMAN — The Chair will inform the gentleman from Schenectady [Mr. Landon] that under the strict rule he cannot a second time address the committee.

Mr. C. C. DWIGHT — I have no objection on my part to insert the words "or promise" after the word "offer" in the amendment as offered by myself, and I would consent to the insertion of the words "contribute to others to pay," as suggested by the gentleman from Schenectady [Mr. Landon], but the point upon which I am strenuous and upon which I think the majority of this committee are inclined to be strenuous is that in regard to this matter, as in regard to many others, the duty of legislating upon this subject shall be imposed upon the Legislature and not assumed by this Convention. Make the power of the Legislature broad enough to cover this whole ground, as I am entirely willing and very desirous it should be made, and it seems to me we have amended the Constitution as it should be done. Now, sir, the framers of the Constitution of 1846 were satisfied, were content to authorize the Legislature to pass an act depriving of the right to vote at any election any person who should make or be interested in any bet or wager, and ever since the adoption of that Constitution we have had upon our statute-books a law of the Legislature which has covered that ground,—has made the fact of a man being interested in a bet or wager a ground of challenge at the polls. Sir, I have no doubt if we should authorize the Legislature to deprive any person of a vote at election who should pay, offer or promise to pay, or receive or promise to receive any bribe for his vote, we should have at the next session of the Legislature, a law passed covering that. It seems to me that all these matters of detail should be left to the Legislature, under provisions of the Constitution broad enough to provide for them.

Mr. PRINDLE — I cannot concur with the remarks of the gentleman from Cayuga [Mr. C. C. Dwight], and I sincerely hope this provision will prevail. I think if there is any one provision demanded by the people of the State of New York it is this one. Of all the evils to be remedied by this Convention I regard this as the most important. Sir, this evil lies at the very foundation of our government. When the voters—those who elect the officers—become corrupt, the fountain is corrupt, and how, sir, can it be expected that a pure stream shall flow from a corrupt fountain? *How can we expect, Mr. Chairman, that we shall*

have honesty in the executive officer, how can we expect that we shall have honesty in the judicial officer, how can we expect that we shall have honesty in the legislative officer, when the very persons who elect those officers—who create them—are notoriously corrupt? It is, I believe, sir, a notorious fact which no gentleman can deny, that offices are bought and sold like chattels in the market. It is a fact, sir, that in many localities in almost every town and election district, votes are purchased for money, and purchased, too, almost openly and unblushingly, by men who claim to be respectable; and, sir, I have heard more said in regard to this very proposition, and in regard to an amendment to the Constitution concerning this evil, than upon any other one subject. Now, sir, why leave it to the Legislature to make this amendment? Why defer it when we have the power in our hands, and it takes only five or six lines of the Constitution, to remedy the defect. I, for one, cannot see, I cannot understand the motive for placing this duty upon the Legislature, when it can be just as well done by this Convention, and by the people who shall ratify the Constitution which shall be made here. I am in favor, sir, of putting this in the Constitution, so that we shall be sure of it. If we say the Legislature may do this we do not know whether the Legislature will do it or whether they will not.

Mr. POND — Say they shall —

Mr. PRINDLE — That is not the proposition. I do not know why we should say "they shall," when we can just as well do it ourselves. We are not dependent upon any Legislature, or dependent upon any lobby of any Legislature which may hereafter assemble. It is for us to place this provision in the Constitution, and I trust sir, it will be placed in the Constitution. I believe if it is placed there, when a man of pretended respectability comes to the polls and offers his vote, and we have a right to challenge him and ask him whether he has contributed money, directly or indirectly, for the purpose of influencing votes or not, we shall have the power in our hands of remedying this defect. Men will not dare to engage in this business when they know that they are liable to have their votes challenged on that ground. Men will not assemble on the night before town meetings, or the night before elections, to contribute their five dollars or ten dollars for the purpose of carrying on an election corruptly, as is now done and as is conceded to be done by both parties, with such a provision as this in the Constitution. I believe, sir, it is the duty of every man in this Convention, who loves good order in society, who loves purity in all official places, to vote to place this amendment in the Constitution.

Mr. BARNARD — I am very glad to hear these confessions that have been made by a gentleman from a rural district [Mr. Prindle]. I have been astonished since I have taken a seat in this Convention to find out how much corruption and bribery there is in the country. We see nothing of that kind in the city at all. Here we have gentlemen getting up all around us to try to put down bribery. It seems that in the country, in the pure rural districts at your town-meetings you meet

on the night before election and you raise money to pay voters for their votes. I never heard of such a thing before. We do not have anything of that kind in the city [laughter], and I hope gentlemen if they wish to put down this bribery will offer such an amendment as will effect the object, and not do more. I tell you, sir, if you pass that amendment as it is upon your table, you tie the people of the State of New York hand and foot, and place them at the mercy of those who are beyond your limits. Why, you cannot even raise money to circulate twenty or thirty thousand extra Tribunes throughout the State to enlighten the people in regard to any subject about which they are to vote. It says you shall not contribute money directly or indirectly to *influence* a single voter and you must swear to that before you are permitted to put your vote in the ballot-box. Certainly we do not intend anything of this kind. If we do I hope the people of New York will never submit to it. We hear of congressional committees raising money to influence elections. We hear of manufacturers in the eastern States raising money to send into the State of New York to influence them in regard to the election of members of Congress who will vote for a high prohibitory tariff; and the people of New York tied hand and foot so they cannot resist this. They are not permitted to raise money to send a speaker into any part of the State to speak for them. They are not permitted to raise money to circulate documents or pamphlets of any kind in regard to any political subject, because the very object of such contributions is to *influence* the voters as to how they shall vote at the coming election. It destroys our whole system of electioneering. It destroys free speech and the free press. We cannot hold a ward meeting in our cities. I do not know how it is in the rural districts, where bribery prevails so extensively, but in the pure, uncorrupted, and incorruptible cities you cannot hold a ward meeting without paying for the hire of the room, and the very object of holding a ward meeting has in its view the influencing of voters at an election to nominate candidates, to raise means and ways to bring voters to the polls who are sick and infirm and unable to walk, to send pamphlets, documents and newspapers among the people, and to hire places where speakers can come and address the people, all of which involves expense, and the object of that expense is to influence the voters as to how they shall vote. Is it legitimate or is it illegitimate? I do not know but that you may carry it so far as to say that every man who makes a speech for the purpose of influencing the votes of others contributes a valuable thing for the purpose of influencing voting, and he will be prevented from casting his vote at the election. We want nothing more—when there are congressional committees and meetings of other States held, raising money and sending it here to influence our elections—than this amendment, to prevent free action, and we can do nothing but repel it. If we dare do it we are prohibited from voting. Now, if the gentlemen who are in favor of prohibiting bribery choose to insert into the Constitution a proposition to effect that object I

would most cheerfully give my vote, if it is found that the Legislature is deficient in its duty in regard to this subject; but in regard to so sweeping an amendment as is offered by the gentleman from Schenectady [Mr. Landon], after you come to read it and ponder upon each word, you will find that every man who contributes a sixpence to carrying an election, or towards paying any of the expense of an election, will be prevented from voting.

Mr. COCHRAN—I move that the Committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Cochran and it was declared carried.

Whereupon the Committee rose and the President resumed the Chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the Committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith had directed their Chairman to report that fact to the Convention and ask leave to sit again.

The PRESIDENT announced the question to be on the motion to grant leave to the Committee to sit again.

Mr. CHAMPLAIN moved to recommit the report of the committee, with instructions to amend by striking out "section 3," and inserting in lieu thereof, the following:

"SEC. 3. Laws shall be made for ascertaining when the citizen offers his vote at the election, by proper proofs, whether he is entitled to the right of suffrage hereby established."

Mr. ALVORD—I rise to a point of order, that no such motion can be entertained in this order of business.

The PRESIDENT—The Chair does not understand the gentleman from Allegany [Mr. Champlain] to move to discharge the committee from further consideration.

Mr. CHAMPLAIN—I do move that the Committee of the Whole be discharged from further consideration of the report, and that it be recommitted.

The PRESIDENT announced the question to be on the motion of the gentleman from Allegany [Mr. Champlain].

Mr. BARKER—I move that the Convention do now adjourn.

Mr. ALVORD—I rise to a point of order, that we cannot adjourn and leave the committee in this condition.

The PRESIDENT—The Chair holds that a motion to adjourn is always in order.

The question was then put on the motion of Mr. Barker, and it was declared carried.

So the Convention stood adjourned.

WEDNESDAY, July 24, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by the Rev. W. C. DOANE.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. BELL presented the petition of A. W. Hardy and thirty-four others, citizens of Rutland, Jefferson county, asking for an amendment to the

Constitution prohibiting the appropriations of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. STRATTON presented twenty-four several petitions from citizens of New York, praying that the Legislature be prohibited from passing other than general laws on the subjects of the traffic in fermented liquors and wines, and for the maintenance of public order and morality.

The petitions were referred to the Committee on Adulterated Liquors.

Mr. STRATTON also presented the petition of two hundred and five citizens of Richmond county on the same subject.

Which took the same reference.

Mr. MERWIN presented the petition of W. M. Lashat and thirty-three others, praying against the appropriation of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. E. BROOKS presented a petition from the citizens of Long Island on the same subject.

Which took the same reference.

Mr. OPDYKE presented the petition of Herbert Reed and twenty-four others on the same subject.

Which took the same reference.

Mr. GREELY presented the petition of J. D. C. Redington and several hundred citizens of Onondaga on the same subject.

Which took the same reference.

Mr. BARNARD presented the petition of H. J. Miller and sixty-two others, citizens of Blooming-grove, on the same subject.

Which took the same reference.

Mr. TUCKER presented the petition of Roswell G. Horton and others, on behalf of the "State Rights Society of New York," against negro suffrage.

Which was referred to the Committee of the Whole.

Mr. HARRIS presented a petition of the town of Lebanon, in relation to charitable devises and bequests.

Which was referred to the Committee on Charities and Charitable Institutions.

Mr. SHERMAN presented the memorial of Rev. G. C. Judson and fifty-nine others, citizens of Delaware county, praying against the appropriation of public money to sectarian institutions.

Which was referred to the Committee on the Power and Duties of the Legislature.

Mr. VERPLANCK presented a communication from A. Brisbane in relation to cruelty to animals.

Which was referred to the Committee on Industrial Interests.

Mr. BURRILL presented the petition of Wm. S. Harris and forty-nine others, praying that a separate clause be submitted to the people prohibiting the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. MORE presented the petition of Horace Hanford and fifty-five others, citizens of Hobart, Delaware county, praying against the appropriation of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. FULLERTON presented the petition of Myron D. Stewart and others, in favor of the prohibition of the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

Mr. FULLERTON also presented the petition of Rev. John H. Lane and one hundred and sixty-five others, in favor of prohibiting the donation of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

The PRESIDENT presented the petition of the Sons of Temperance, praying for the prohibition of the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT also presented a communication from the Comptroller of the State, in answer to a resolution adopted by the Convention July 17th.

Which was referred to the Committee on Education.

The PRESIDENT also presented a communication from the canal appraisers, in answer to a resolution passed July 13th.

Which was referred to the Committee on Canals and ordered to be printed.

Mr. CONGER — I would like to have the communication from the Comptroller, which was referred to the Committee on Education, also printed.

The CHAIRMAN — The rule requires all these communications to be printed.

Mr. BEALS offered the following resolution:

*Resolved*, That the Commissioners of the Land Office be requested to report to this Convention:

The number of acres of land belonging to the common school fund in 1822, the report to specify the county in which the land was situated, the name of the tract and the several lots, with the number of acres in each. Also what lots have been sold, with the price of each, and what remain unsold. Also how much money has been received into the Treasury from such sales, and how much is still due upon bonds for lands. Also whether any sales for land under water have been made; whether land under the waters of the Hudson river, or under the waters of the East river, or under the waters of the shores of Long Island or Staten Island, or under the waters of the inland lakes; and if so, what sums of money have been received for such lands, specifying the sum received for each part, and whether the money received for lands under water has been added to the capital of the common school fund, and if not, the reasons for crediting it to any other fund. Also what lands belonging to the State, whether acquired by escheat or otherwise (except those sold in by the Commissioners for loaning the moneys belonging to the U. S. Deposit Fund), have been given away by act of the Legislature, whether granted to individuals, or to railroads, or charitable institutions, or for public use in any way.

Which was laid over under the rule.

Mr. ROBERTSON offered the following resolution:

*Resolved*, That the treasurers of every county and the financial officers of every city, town and village in this State, be respectfully requested to

make a return to this Convention of the amount of funded indebtedness of such county, city, town and village, whereupon interest is payable, and if it consists of several debts incurred at several times and for different purposes, for which bonds or other written obligations have been issued, then of their amounts and the times when and purposes for which they were issued.

Which was laid over under the rule.

Mr. SHERMAN—I ask that the resolution which I introduced yesterday may be printed.

There being no objection it was ordered to be printed.

Mr. SHERMAN offered the following resolution:

*Resolved*, That document No. 30 be reprinted with the amendments of the committee thereto, and that the lines be numbered as in the case of bills reported in the Legislature.

Which was referred to the Committee on Printing.

Mr. BARKER—I move that this order of business be suspended for the day.

Mr. SCHUMAKER—I would ask the gentleman to withdraw that motion for the present.

Mr. BARKER—I would prefer not to do it.

The question was put on the motion of Mr. Barker, and it was declared to be carried.

The Chair announced the pending question to be upon the resolution of Mr. Champlain to discharge the committee from further consideration of the report, and to recommit it to the Committee on the Right of Suffrage.

Mr. CHAMPLAIN—The object of the introduction of this resolution was not that I might get an opportunity very briefly to address the Convention in opposition to the report of the committee, but from an apprehension that under the order of business as we were proceeding, I would be deprived of that privilege, and being satisfied now, sir, that the third section of this article must be considered in Committee of the Whole before it is reported to the Convention, and being anxious to facilitate the action of the Convention, I will withdraw my motion.

The question then recurred upon granting leave to the Committee of the Whole to sit again.

Which was granted.

The Convention then resolved itself into Committee of the Whole, on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, Mr. ALVORD, of Onondaga, in the chair.

The Chair announced the question to be upon the amendment offered by the gentleman from Schenectady [Mr. Landon] to the amendment of the gentleman from Ontario [Mr. McDonald].

Mr. LANDON—I desire to offer an amendment to the amendment offered by me yesterday, so that the word "influence" shall be stricken out and the word "compensation" inserted, so that the clause will read, "as a compensation or reward for the vote."

The CHAIRMAN—There having been no affirmative action taken upon the amendment it will be amended as requested, if there be no objection.

Mr. KRUM—I would like, if in order, to make a suggestion.

The CHAIRMAN—The Chair would ask the gentleman whether he has not addressed the Chair before on that subject?

Mr. KRUM—I do not rise to address the Chair, but to make a suggestion to the gentleman who offered the amendment.

Mr. KRUM—I would suggest to the gentleman who offered the amendment that after the word "expected" he should insert the words "to offer," so that it will read "every person who shall receive or expect to receive, or offer to receive." My object is to make the person who offers to sell equally liable to challenge with the person who offers to buy. As the amendment now stands there is nothing that makes a ground of challenge for the seller or the person who offers to sell.

Mr. LANDON—Mr. Chairman, I will vote for that amendment when it is offered, but I prefer not to accept it.

Mr. BOWEN—Is it in order now to offer an amendment?

The CHAIRMAN—The Chair is of opinion it is not now in order.

Mr. BERGEN—I have listened to this debate for several days on the question now pending, and had not intended to say one word on the subject; but yesterday an insinuation was thrown out, if I mistake not, by a member from the western part of this State [Mr. Landon], that there was a great deal of corruption in the rural districts of this State; bribery prevailed to a great extent, votes were bought and sold the same as sheep in the shambles. Now sir, as a resident of a rural district of the county of Kings, mainly inhabited by the descendants of the Hollanders and Netherlanders, I must say that this corruption does not exist in that locality. I have been familiar with the politics of that locality for years, and I have never known a single instance, where a vote of an individual has ever been bought or sold—I never heard of an instance. Now, if the western part of this State, settled by descendants of the Puritans, are so corrupt as is represented, the amendment now pending may be necessary, but I can assure this Convention it is unnecessary in that part of the State settled by the Hollanders and Huguenots. It is entirely unnecessary to be applied to that portion of the State, but if it is necessary to make pure elections in the western part of the State, I will consent to it.

Mr. PRINDLE—Will the gentleman allow me to ask him a question? Does the gentleman believe that no votes are bought or sold in his county?

Mr. BERGEN—I have been familiar with the politics of that county for more than thirty years, and never within my knowledge has a vote been bought or sold; such things may have been done, but I have never known of such an instance.

Mr. PRINDLE—The gentleman dodges my question.

Mr. BERGEN—I doubt very much, Mr. Chairman, whether an instance of that kind has ever occurred in the county of Kings [laughter], with a population of nearly 40,000, more than double that of some of the western counties: therefore, on behalf of the portion of the county of Kings which I represent, I desire to purge that locality of these imputations,



which may belong to the western part of the State, but which do not pertain to that part of the State that I have referred to.

Mr. HADLEY—I am glad to hear the gentleman from Kings state that there is no bribery or corruption in the county of Kings. I represent in part a district and a county largely settled by emigrants from Long Island, the descendants of the same class of men that the gentleman from Kings [Mr. Bergen] says he represents. I have been engaged somewhat in the politics of the county of Seneca for the last thirty years, and can say this: that among the descendants of the same class the gentleman represents on Long Island, I have found men who buy and sell votes at every election and have done so, and I can only account for it by the fact, that when they get up into the rural districts beyond the influence of the great cities of New York and Brooklyn they become corrupt [laughter], but as long as they remain within the magic circle, they are entirely pure and virtuous. If it is true that in the rural districts in the county of Kings, there is no corruption, certainly this amendment will not hurt anything there, but if we are so corrupt in the rural districts of the State it may be of some benefit to us; therefore, I hope the gentleman from Kings [Mr. Bergen] will vote with us on this question. The sons of the Puritans are slandered everywhere, to-day almost; and when the gentleman from Long Island [Mr. Bergen] shall come in contact with the sons of the Puritans of the western part of this State, he will find that they possess as much intelligence, as much fidelity and as much virtue as do the descendants of any other people, whether they live in the county of Kings or elsewhere.

Mr. S. TOWNSEND—I rise merely to confirm all that my old colleague [Mr. Bergen] has just said as to his immediate rural locality, and the comparative purity of the mode in which its elections are conducted, when reviewed in connection with the exercise of the right of suffrage in other portions of the State. In the sequestered county of Queens, and the still more secluded one of Suffolk, I know of no such practices as have been properly held up for public censure, as being general elsewhere. The small vote (one-third of the legal one) at the recent election in the district that I have the honor in part to represent on this floor, shows that in that instance, at least, no effort was made to bring out a full vote of the entire district, however strenuous exertions may have been made personally by a candidate (justly a defeated one), and his friends to substitute deceptively his own name for my own upon the democratic ballots. It is pertinent to this view of the question to say that when in 1840 the registry law was first forced upon the city of New York singly, excepting from its provisions the other twelve cities—its delegates upon this floor (with whom I had the honor of being associated), contended that the electoral vote which was in proportion then as only one to nine of its population, whilst in the rural districts the ratio was as one to six—indicated so far as the purity of the exercise of the elective franchise was concerned, a decided advantage in favor of that much traduced city. *I have no reason to know or believe that the lapse*

of twenty-seven years has at all changed these relations.

Mr. GOULD—These statements, sir, form the oasis in the desert. I am delighted beyond pleasure to hear them, and I only desire to have them fully confirmed. I would, therefore, propose to call upon Mr. Schumaker of Kings, or, Mr. Murphy, of Kings, to state whether they ever knew, in the course of their lives, any money paid for votes in the county of Kings.

Mr. SCHUMAKER—I take great pleasure in answering the question propounded by my old friend from Columbia [Mr. Gould], whom I have known from my earliest infancy, and I know the reason why he asks it; it is, that there is so much corruption in the county of Columbia. When I was a little boy and living in the neighborhood of the gentleman, both parties used to stand around the polls with their pocketbooks out to buy votes. I left the county of Columbia twenty years ago; but once in a while I go up there about election time, and I see the same old practice. In the county of Kings a dollar does not appear as large to the citizens there as it does in the county of Columbia or elsewhere in this State, or in the county of Seneca, for instance.

Mr. HARRIS—It takes more to buy a vote then?

Mr. SCHUMAKER—They do not buy votes for dollars in the county of Kings; I have seen fifty cents buy a vote in the rural districts, not in the county of Kings. No votes are for sale there. I never yet have known a regular sale of a voter in the county of Kings in my life; they are generally men who are engaged in politics, and have target and steamboat excursions, and all that kind of clap-trap to approach persons running for office, and they are generally persons who are of the order of which there has been so much spoken on this floor—the “Know-Nothing Order.” They were not Irishmen, not Germans, not descendants of the Hollanders, but they were descendants of the persons who came over in that good old ship called the “Mayflower.” The most notorious strikers, the most notorious corruptionists that we ever had in our midst, and I speak a little from experience, are descendants of the Puritans and persons who emigrated into our county from Massachusetts.

Mr. FOLGER—Was Swartwout a descendant of the Puritans?

Mr. SCHUMAKER—Swartwout was a very small thief of the democratic stripe, but we have had in the last four years thieves of the Puritan stripe, that Swartwout, although a large man, would be considered dwarfish in comparison to them. I know Swartwout and Price committed a sort of petit larceny, but the immense larcenies and robberies which have been committed throughout the country since the republican party have had the ascendancy in the United States, dwarf the action of Swartwout and William Price twenty years ago.

Mr. LUDINGTON—Were the Willett's Point swindlers descendants of the Puritans?

Mr. SCHUMAKER—I would refer the gentleman to Mr. Townsend, of Queens county, as we

do not know anything about those men in our county, and in reply I would ask him whether some of the great canal swindlers were descendants of the Mayflower people whom we have heard so much of?

Mr. M. I. TOWNSEND—I would rise to a point of order, that this discussion is not pertinent.

The CHAIRMAN—The Chair is of opinion it has gone far enough in that direction.

Mr. SCHUMAKER—I was about to say we had some persons with us who are very fond of money, but that they never received it openly at the polls as it is in the habit of being done in the country, where it is quite a common practice. But I never have recollected an instance where a person has been indicted—and I have had a little experience in the criminal courts of our county—for openly receiving money at the polls for his vote. It is quite common, I know, in the country, from personal observation, but I do not believe any of the gentlemen from Kings (and I see around me a great many of them of the legal profession) ever recollect of a single instance of a person being indicted or convicted for selling his vote at the polls. There have been a few indictments in relation to spending money, posting bills, hiring wagons, etc., which was called by the grand jury a subterfuge for influencing voters, but no out-and-out sale of a vote at the polls has ever occurred in our midst. There have been frauds at elections, and as I was asked by the gentleman from Columbia [Mr. Gould], I would say that I have never seen anything like such frauds in the city, although I have no doubt that announcement may astonish a great many persons in this Convention; they either do it secretly or else they do not do it at all.

Mr. GOULD—I know the rock from whence that gentleman was hewn and the hole from whence he was digged. If it is really true that that gentleman of his own personal knowledge has never known anything about the purchasing of votes, I have only to say that the age of miracles has not ceased, and that you cannot give me any miracle that I will not swallow after this.

Mr. CONGER—I would like to inquire of the gentleman who proposed this amendment, and the gentlemen who favor a wise constitutional provision in regard to this matter of preventing bribery and disfranchising those who participate in it, whether they cannot find in the English language some more suitable phrase to use in this clause than "expect to receive." We have the word "receive" as opposite and complementary to the term "pay." And then we have "expect to receive" as opposite to the term "offer to pay." But gentlemen must see that an offer to pay does not have its full opposite in so general a phrase as this "expect to receive," because the expectation of a man may not be upon an offer to pay him, it may be founded upon something else. I throw out these suggestions because I think that to challenge a man at the polls on a charge of a general expectation to receive, without proving any offer to pay, would be nothing but an impediment to the exercise of the franchise.

The question was then put on the amendment of Mr. Landon, and it was declared adopted.

Mr. VEEDER—I would inquire whether it is in order to move an amendment to any other section?

The CHAIRMAN—The Chair is of the opinion it is not now in order.

Mr. BICKFORD moved the following amendment:

Amend by adding at the end of section one, the words: "*Provided further*, that every man of the age of eighteen years, who is a native citizen of this State, and who shall always have resided therein, and who shall possess the other qualifications above provided, shall be entitled to vote for all officers elective by the people."

Mr. BICKFORD—In offering this amendment it will be perhaps expected that I should say a few words in its favor. It will be noticed that the amendment substantially proposes to confer upon the native citizens of this State—those born in the State and who have always resided in the State, and who have attained the age of eighteen,—the privilege of voting. It, indeed, proposes a considerable change in the right of suffrage as it has heretofore existed in this State; but it seems to me, sir, that it is a change which ought to be made, and which may be made with great propriety and with entire safety. The question as to who shall exercise the elective franchise is after all a question for the Convention and the people to determine. It is truly a conventional right. There is no limit fixed in nature, and no reason, other than an arbitrary rule, why a man should vote who has attained the age of twenty-one, when another who has attained the age of twenty years and six months, or twenty years simply, or eighteen years, should not vote. It is a question to be fixed by those who are to determine the matter, for there is no arbitrary line fixed in nature. I would say briefly that the class of men who are included in this amendment, as a class, are eminently patriotic; they have always lived in this State and are familiar with its interests; they have every means of acquiring an education, although I do not favor a mere educational test, yet I mention this to show the safety of this deposit of the elective franchise. If we wish to please the mothers about whom we have heard so much, you cannot better please them than by admitting their sons, who are their pride and delight, three years earlier to the exercise of the elective franchise. Now, sir, if we go back in the history of our race, we shall find that the period at which men have attained their majority has gradually diminished. Before the flood, when men lived to the age of nearly a thousand years, a child of a hundred years was still a child, the pride and hope of its mother. Afterward we find that Isaac emancipated his sons Esau and Jacob at the age of forty. Under the Jewish economy the age of majority was fixed at thirty years. Under the Roman Empire the age of majority was fixed at twenty-five. During the middle ages, in the Western parts of Europe, it was fixed at twenty-one, and we have adopted the same period heretofore in this country. Now, sir, in the age in which we live—in this fast age—men arrive to maturity both in body and mind at a great deal earlier period than formerly.

Does not every farmer who has a boy of eighteen years of age in ordinary health calculate he is able to do a man's day's work? I was brought up a farmer myself, and I was competent to do a man's day's work at sixteen, and I did it, too. We hold men at eighteen liable to the draft, and require them to peril their lives in the battle-field, and require of them a full man's military duty, and at sixteen even we admit them to make the most important contract of their whole lives, namely, the marriage contract. We treat them in many important respects as men, and it is time that we should acknowledge them to be men in the full acceptance of the term. The chairman of the committee, in his report, speaks of them as "half-grown boys." They are men and they should be recognized as men by this Convention and the people. He also says:

"Nor have we seen fit to propose the enfranchisement of boys above the age of eighteen years. The current of ideas and usages in our day, but especially in this country, seems already to set quite too strongly in favor of the relaxation, if not total overthrow of parental authority, especially over half-grown boys. With the sincerest good-will for the class in question, we submit that they may spend the hours which they can spare from their labors and their lessons more usefully and profitably in mastering the wisdom of the sages and philosophers who have elucidated the science of government, than in attendance on midnight caucuses or in wrangling around the polls."

Is it possible that the acute gentleman who penned this, supposes that there can possibly be anything in it. How do we derive a political education in this day and generation? Is it by "mastering the wisdom of sages and philosophers who have written on that subject?" Not at all. It is from the newspapers that we derive our political education, and the gentleman is aware that the sheet he issues every day, or what is issued under his supervision, is calculated and expressly designed to secure the political education of the people, and it is thus we derived our views and our impressions on the questions of the day, and the duty that devolves upon us as citizens in relation to the matters involved in a pending election. The boys of eighteen (if you choose to call them boys, I call them men) are well posted and abundantly fitted to exercise the elective franchise. If intelligence is to be a test of this privilege, the boys at eighteen are much more intelligent on the average than many of the classes who we admit to the right of suffrage and who are rightfully admitted, for I would deprive no man of the right of suffrage who now enjoys it. But certainly men at eighteen are as intelligent on the average as men over seventy—certainly over seventy-five. The class of young men embraced in this amendment are certainly as competent to vote as are the average of persons born in Europe and naturalized in this country. I would not deprive any of those or change the law on that subject, but there are those who think there is danger from the influx of foreign voters, naturalized in this country. I do not anticipate any such danger, but if there is any such danger in that direction, the proper remedy is to admit another class in whom there is no danger to the

exercise of this right, and if any gentleman supposes there is danger from admitting the negroes to a share in the elective franchise, let me say that danger is to be met by admitting another class, against whom no good objection can be made. I, therefore, hope, sir, that this amendment will prevail, and if it is not to prevail in this shape, if there are objections in the mind of some, that it only admits those who are born, and who have always resided in the State, if it is objected to on that ground, I will propose another amendment simply to strike out the words "twenty-one" from the report, and insert the word "eighteen," so that it will admit all men of that age to vote on equal terms with the rest.

Mr. ROBERTSON—I introduced a resolution of a similar kind with that now before us at the commencement of our meeting here, which was very summarily disposed of. I am glad to find there are gentlemen in other parts of this State who have thought over this matter, and have had occasion to think deeply on this subject of the rights of the younger inhabitants of this State to exercise the privilege of suffrage. I wish, therefore, to submit a very few remarks in support of the proposition of the gentleman from Jefferson [Mr. Bickford]. There appears to be two ultimate principles which are presented in regard to the determination of what qualifications should confer the right of suffrage—universal and manhood suffrage. Under the universal suffrage flag rank those gentlemen who favor the right of females to vote at our elections. Under the manhood suffrage flag are enlisted all those who think that every one who bears the port and outward semblance of manhood, and have the fully-developed mental powers of man in regard to his capacity to participate in government, should have a right to vote at our elections. All writers on this subject in regard to manhood suffrage, all who have exercised their thoughts and feelings on the other side of the Atlantic on this subject, have always conceded that manhood suffrage is the true limit and test of what should constitute the extent of suffrage in representative government. Manhood must everywhere be a comparative term. It is a term which derives its legitimate test and standard from the climate, the race, and surroundings of the inhabitants of every country. Manhood, in some climates, so far as the physical condition of man is concerned, reaches maturity much earlier than in others. I apprehend that manhood reaches its limit and powers at a much earlier period in the southern than it does in the northern part of the Continent of Europe, and natural intellectual vigor seems to follow the same rule. I agree with the gentleman from Jefferson [Mr. Bickford] that at eighteen years of age the capacity of learning and the power of communicating instruction to others, the ability to think well and deeply in all subjects involving the interests of the community, is as strong as it is at twenty-one. If the right of suffrage be natural, as has been contended by some gentlemen here, I would ask by what authority the legislature of this State, or by what authority we sitting here to regulate the right of suffrage, attempt to impose this additional three years probation before we allow man to exercise

that right which he attains on arriving at manhood. Parties at eighteen years of age, in this country, not only are engaged in physical labor and the acquisition of knowledge, but they are also engaged in imparting it to others, and in teaching and directing others, and in superintending mechanical and other operations. There are masters of vessels at eighteen years of age, upon whose judgment and knowledge of navigation may depend the preservation of the lives of their passengers and the safety of their vessels and cargo. Men of eighteen have so fought in battles, as would not have done discredit to far older and more experienced generals, during our recent struggle for national existence. Men of eighteen have shed their blood by thousands freely on the field of battle in support of the independence of their country in the first struggle we had with the parent country. Men of like age have freely shed their blood and offered up their lives over the whole extent of this land for the purpose of sustaining the second war for the existence of the country. I find in the report which comes from the Committee on Suffrage that the colored men are recommended to our votes because they were "indiscriminately drafted and held to service to fill our State quotas in the war, with the whites, and henceforth we are to deal with men according to their conduct without regard to their color." So I say; we are to try men in accordance with their conduct and not in accordance with *their age*. At eighteen years of age, men are fathers of families, they bring up and rear the offspring who are to fill hereafter their respective parts in the nation and government of the country, who are in fact to compose that future nation. Marriage in this country, where the means of livelihood are more easily obtained, takes place at a much earlier age than it does in any other country. We therefore intrust to the care of a father of eighteen years of age the instruction and guidance of the infant mind, who are hereafter to become the constituent element of this republic, which is by them to be conducted to greatness or to misfortune, and yet we are not willing to intrust to him—the man who thus infuses into the mind of his children the means of knowledge which he has himself acquired, the learning of which he is possessed and the fruits of his experience of life—we forbid that man to step to the polls and vote for an officer however inferior may be his office, and however minute may be the reach of his influence and functions. I ask whether gentlemen are not willing to confide in the pure and uncorrupted mind of the "half grown boy," as he is called in this report. I ask the Convention whether they are not willing to trust the privilege of voting to them, with a fair field of life before them, with untainted principles, and with a love of honesty, honor and principle, that they have been recently taught by their parents, when they would spurn a bribe with indignation, rather than the man of party, who has learned to tamper with his honor and to yield to the temptations others may present to him: whether, if this whole country were governed by the votes of men of eighteen, we should not have more pure elections than we now have? I would

more especially appeal to those gentlemen who are anxious to introduce men of color to vote at our elections, without any distinctions of property, whether they are not as willing to trust the white "boys" of eighteen, as they now exist, as they would a colored man of twenty-one, to vote for those who are to manage the affairs of this State. I appear in behalf of those who have hitherto been ostracised and excluded from the right to govern the country. I ask gentlemen to consider whether they will unhesitatingly and without reflection exclude all those men of this country, those "half grown boys" between eighteen and twenty-one, and at the same time say that they do it on the strength of the argument contained in the report of the Committee on Suffrage. These men of eighteen are therein recommended to dispose of their time as follows:

"With the sincerest good-will for the class in question, we submit that they may spend the hours, which they can spare from their labors and their lessons more usefully and profitably in mastering the wisdom of the sages and philosophers who have elucidated the science of government, than in attendance on midnight caucuses or in wrangling around the polls."

That recommendation might, with much more effect and justice, be followed by hackneyed and veteran politicians who have so long directed the affairs of the State, and been steeped in the turbid waters of its politics.

The question was then put on the amendment proposed by Mr. Bickford, which was declared lost, on a division, by a vote of 33 to 82.

Mr. OPDYKE—I offer the following amendment:

Insert at the end of the tenth line of the first section of the article reported by the committee:

"*Provided*, That any person not a qualified voter before the first day of January, 1870, shall not be deemed qualified to vote until able to read the Constitution in the English language, and write his name; but this provision shall not apply to any person prevented by physical disability from reading or writing as aforesaid."

Mr. ROGERS—Is it in order to lay that on the table?

The CHAIRMAN—The Chair will inform the gentleman that no such motion can be entertained in Committee of the Whole.

Mr. OPDYKE—It will be seen that this is the amendment slightly modified, introduced by the gentleman from Dutchess [Mr. Carpenter], some time since, and which he subsequently withdrew at the request of some of the friends of this proposition. The proposition looks to the future elevation of the elective franchise by a method which every one should regard as unobjectionable, since it will deprive no existing elector of his right to vote. It seems to me to have sufficient merit to commend itself to the favorable consideration of this Convention, and to the approval of the people. The discussion it elicited on its first introduction, like other discussions which have followed it, took a wide range. Gentlemen have very properly, entered into an examination of the elementary principles which underlie the question of suffrage, with the view of defining the proper limits of that trust or privilege. This latitude of discussion is



due to the nature and importance of the subject. The object of the discussion should be to ascertain, with all possible precision, the boundaries of the elective franchise, best calculated to secure the public good. Until we have done this, we cannot safely determine who should be admitted and who excluded. We have had many able speeches on that subject, but as no gentleman who has shared in these elementary discussions has presented the precise views I entertain on the subject, I will ask the indulgence of the committee while I briefly present them. Some gentlemen, taking the spirit of the Declaration of Independence as their guide, maintain that all have a natural right to share in the administration of the government.

This position, although in strict accordance with the original theory on which our government was founded, is evidently too broad. Literally enforced, it would destroy any government. Those who believe in its practical enforcement must overlook, as it seems to me, the great end for which governments are or should be instituted among men—namely, the promotion of the welfare and happiness of society. Whatever form of government will best secure that end is the best form. No American doubts that popular government, which aims through equal laws and equal civil rights to secure “the greater good of the greatest number,” is the type best calculated to secure the highest good of the whole collectively. This is the professed aim of our own government. Our statesmen have reduced the expression of that aim to the maxim just quoted, a maxim which, in my judgment, expresses the true theory of government. Now, sir, if we admit, as I think we must, that the true design of government is to promote the happiness or well-being of society, it follows that it should be so constructed as will best secure that end. Every constitutional provision should be tested by that principle. Those that embody the best known rules for securing the welfare and advancement of society should stand; those that fall short of that standard should be rejected, or so changed as to conform to it. This, it seems to me, is the touchstone we should apply to every proposition that comes before this Convention. Let us then apply this test to the elective franchise, and thus ascertain its proper boundaries. The first point to be determined is the nature of that trust and the extent of the political power it confers on its recipients. In all popular governments, those in whose hands it is placed constitute the governing class. They hold the supreme political power. They shape the policy of the government and dictate its laws. It is by their mandate that we are here to-day. They are taking note of our words and acts, and they stand ready to exercise their sovereignty in the acceptance or rejection of the Constitution we shall present to them, according as they may deem it conducive to their good or to their injury. True, sir, the body of electors, in the exercise of their sovereignty, choose to perform the immediate functions of government through the agency of representatives chosen by themselves rather than by their own direct efforts. Their numbers render this expedient unavoidable. But these representatives, with rare exceptions, faithfully execute the will of those who elected them. Nor is this all.

When taken collectively, the representatives reflect, with great accuracy, not merely the political opinions of their constituents, but their average moral and intellectual qualities as well. In a word, the representative body is in all essential characteristics a miniature reproduction of the electoral body. This fact may appear strange, but observation proves it to be true; and a moment's consideration will show that we have no right to expect a different result. The chords of human sympathy are strongest between those of like character and like condition. Therefore, the ignorant and depraved elector will be more likely to vote for a representative of his own type than for a wise and virtuous one, and *vice versa*. In short, the general truth, that like produces like, receives another verification in the product of the ballot, in the marked similarity in all essential qualities of the electoral body and its political offspring, the representative body. We are virtually governed, therefore, by those who exercise the right of suffrage. They are our rulers. They direct and control the whole machinery of government, from its lowest to its highest functions. Such, sir, is the nature and extent of the power that accompanies this franchise. It is as unlimited as imperial ruler ever wielded. How important, then, that those on whom it is conferred should have the requisite qualifications for exercising it in the advancement of the public good. Now, sir, what are those qualifications? By common consent, the first and highest prerequisites for admission into the ranks of the governing class are intelligence and integrity. These qualities, in some degree, are deemed indispensable for admission to that class by all governments, as is proved by the universal exclusion of idiots, lunatics and persons convicted of crime. In fact, it is a received axiom in political science, that intelligence and virtue are the only foundations on which popular government can be sustained. Any one who will for a moment reflect that the science and art of government constitute one of the largest and most intricate departments of human knowledge, cannot fail to appreciate the importance of having an intelligent body of electors. Nor can we, in view of the recent effort of highly intelligent men to destroy the best government in the world, overestimate the value of a patriotic integrity of character capable of resisting the promptings of selfish ambition and other evil desires. The learned gentleman from Oneida [Mr. T. W. Dwight], in his able speech on this suffrage question, some days since and again to-day, named three other prerequisites for admission to the elective franchise—namely, incorporation, independence and interest. With regard to the first, if he means by it only that those not “native here and to the manor born,” should undergo a probation long enough to understand our institutions, and for the growth of an attachment to our country, I agree with him fully; but I cannot agree with him in relation to either of the other two. There is no such thing as independence or entire freedom from dependence in society. The whole body of society is bound together by a chain of inter-dependence from which no one of its members can escape, except by a total severance from the society. This is as true of the

body politic as it is known to be of the body corporal. This condition of dependence is reciprocal. The public official is dependent on the government for his place and his salary, and the government is dependent on the official for his services; the employed is dependent on the employer for his wages, and the employer on the employed for his services; the representative is dependent on his constituents for the trust he holds, and the constituents on the representative for the faithful performance of that trust, and so on until you reach the public pauper. There the reciprocal dependence ceases. The public pauper is wholly dependent on the State for the means of prolonging his existence. From his misfortune or fault he has lost the capacity of sustaining himself, and can contribute no strength, physical, mental or material, to aid in sustaining the State. Those who do this, rightfully constitute the State. Therefore the dependence existing between the State and the pauper is not reciprocal, but all on one side. The pauper is indebted to the State for everything, including life; the State is indebted to the pauper for nothing. Rightly considered, he is no longer a member of the State, but one of a helpless class who live through its bounty. Sir, let us be careful, lest sentiments of kindness or party interests mislead our judgments on this question. The proposition that those who contribute no strength to the State, and are themselves wholly supported by its bounty, have a right to share in its government, is so palpably unsound, that I am persuaded gentlemen who support it now will hereafter have occasion to regret it. The other prerequisite insisted on by the learned gentleman from Oneida [Mr. T. W. Dwight], appears to me to be wholly unnecessary. If interest in the State entitles a person to the right of suffrage, all persons are entitled to it, for every man, woman and child, including public paupers, have an interest in it. All are indebted to it for the protection of their relative rights, and for their security against force, violence and fraud. In fact, other portions of the animal kingdom have an interest in the government, as witness our laws for the prevention of cruelty to animals. Nay, more, the vegetable kingdom is not without such interest, as witness our laws for the protection of useful plants from the domination of the hardier, noxious varieties, such as the Canada thistle. For these reasons I think the gentleman should eliminate "interest" from his list of prerequisites. It embraces too much. Sir, even the great prerequisites, intelligence and integrity, essential as they are to the attainment of good government, should not, in my opinion, induce the State to confer the right of suffrage on all who possess them. I would withhold it, as we now withhold it, from woman and from minors. Woman, I think, has quite as much intelligence as our own sex, and she has more purity. She would, therefore, make an unexceptionable elector or representative. But I would withhold from her the right to exercise either function, for her own sake. The delicacy of her nature and the fineness of her sensibilities forbid that she should enter the arena of politics, to share in its fierce and demoralizing contests. Such duties are better suited to the rougher nature of man, but

even to him they are not elevating in their tendencies. The effect on woman would be more deleterious still, and, for one, I am disposed to protect her from it, both for her own sake and for ours. So in regard to minors of our own sex, between the ages of eighteen and twenty-one. With few exceptions they have the intelligence and integrity requisite for good electors; and they have an additional claim to the right of suffrage, grounded on our requirement that they shall aid in fighting our battles. But I would continue to exclude them from its exercise, for the same reason that I would exclude woman; that is, for their own good. That period of incipient manhood, instead of being spent in the exciting field of politics, should be devoted to preparation for some useful calling by which they may fight the battle of adult life successfully. Mr. Chairman, it will be seen from what I have said, that I would exclude from the electoral class all but adult men possessing the requisite degree of knowledge and integrity. This I believe to be the proper limit of the elective franchise if we would have good government. It differs from the boundaries established by our present Constitution only in this: it rejects the property qualification now required of colored men, and it requires a higher standard of intelligence, and also, if it be feasible, of integrity. I would abandon the trace of property qualification remaining in our Constitution for two reasons; first, because it is invidious in being applied only to colored men; and secondly, because experience has shown that its possession does not confer political knowledge. It may, perhaps, be best to retain this requirement in some degree in the government of cities, which are not properly of a political nature, but relate mainly to the care and regulation of property. But in relation to the State government, I would abandon it altogether. Men of wealth are usually so absorbed in the acquisition and care of property that they have little leisure or inclination to take an interest in public affairs. When bad government is brought home to them in the form of riotous disorder or onerous taxation they are both loud and indiscriminate in their denunciations of public men, and occasionally make a spasmodic effort at reform. But being, from their habitual inattention to public affairs, "most ignorant of what they're most assured," they are apt to make a sad failure of it, and not unfrequently make matters worse instead of better. As regards intelligence, I think the people of this State, and of the United States, have not sufficiently heeded the importance of that quality in the governing class. Overlooking the important fact that the electors reproduce their own average of intelligence in the representative body, they have placed the standard of knowledge too low. The present tendency seems to be to further depression, which I regard as most impolitic, if not dangerous. What the public good clearly demands is a higher standard of intelligence for voters; and for one I am prepared to take a slight step in that direction, such as the amendment I have offered proposes. Its adoption, as I have already said, would not exclude from the polls any who have now the right to vote. It would merely say to future claimants, if you wish your

names enrolled in the governing class, you must first learn to read and write. This requirement is as reasonable as it is proper. If the applicant has too little of intellect or of self-respect to thus qualify himself, he would be properly excluded. A kindred proposition will be presented for the consideration of the Convention, making the education of all children in the State compulsory. The adoption of the two provisions would do much to suppress ignorance in the community, and in an equal degree to elevate the character of our State. Sir, I am aware that this proposition to curtail the existing boundaries of the elective franchise, although intended only to apply to those who have never yet been entitled to vote, will strike some gentlemen as an impolitic departure from our hitherto uniform practice of enlargement. The gentleman from Rensselaer, with his liberal views of suffrage, will doubtless regard it as a downright wrong. That gentleman cannot value more highly than I do the truths contained in the Declaration of Independence; nor can he place a higher estimate on the political wisdom of its author. But I beg to remind him that neither the author himself, nor any of his contemporaries or successors, ever attempted, in practice, the literal enforcement of the principle of universal suffrage. Why, sir, in the broadest extension of the franchise that has ever obtained in any one of the United States, or in any State with whose history I am acquainted, not one-fifth of the entire population have been entitled to vote. Under our present Constitution we exclude all of one sex and all minors of the other. We also exclude nearly all whose skins are not white; all of foreign birth of less than five years residence or who have not been naturalized; all native born citizens of the United States who have not been residents of the State for twelve months; all convicted criminals, and persons of unsound mind. Why have we not lived up to our original theory of unlimited suffrage? The answer is obvious. It has not been deemed compatible with the public good. This is the only true test of suffrage, as it is of every other prerogative of government. And, sir, it is solely on that ground that I would prospectively exclude those who cannot read and write. Reading and writing, I admit, are not unerring indices of the intelligence requisite for the proper performance of governmental functions; but I think the absence of that knowledge may, as a general rule, be regarded as evidence of unfitness. At all events, its requirement will be a step in the right direction, and it will serve as a basis for a higher step hereafter. The essential elements of good popular government are intelligent electors and faithful representatives. By excluding the lowest grade of ignorance we shall secure a higher average of intelligence in the electors. I hope we shall be able, also, to devise means for elevating the standard of official fidelity. If we accomplish both, I am confident the effect on the character of our State government cannot fail to be most salutary. At least two of our sister States—Massachusetts and Connecticut—have adopted this limitation of suffrage proposed by this amendment, and, as I am informed, have found its results most satisfactory. General Ashley, member of Congress from Ohio, proposed, at the recent

session of that body, an amendment to the Constitution of the United States similar to the one I have offered. I welcome his movement as a bow of promise for the future of our common country; but I hope we shall not permit Congress to anticipate us in this salutary reform. I am unwilling that the Empire State should lag a step behind the foremost on any of the pathways that lead to a higher civilization. If she would excel in intellectual development, she must stimulate the demand for education by strengthening the motives for its acquisition. The well-known principle of commerce, that supply is measured by the demand, is equally true in politics and morals. Increase the motives for education by making it a prerequisite for voting, and you may be sure of soon finding every adult male in possession of it. The objection urged by the Committee on Suffrage, that it would be difficult to apply this restriction impartially, appears to me ungrounded. The capacity to read the Constitution would be sufficiently demonstrated by the applicant for registration, by his reading any one of its sections that the registrars might designate, and his capacity to write by recording his own name in the registry of voters. I can see no danger of partiality or unfairness in matters as simple and direct as these. Let us not fear that the people are unprepared to take this step forward, provided it be proper and salutary. They are ripe for every proper reform, and they are quite as capable of determining that point as we are, and they are more likely to act up to their convictions, because they have no constituency standing behind them, to affect their action or weaken their moral courage. I trust the amendment will receive the favorable consideration of the committee and the Convention.

Mr. CONGER—If I understand the honorable gentleman from New York [Mr. Opdyke] correctly, he has presented the mercantile view of the foundation of government and the structure of society. He has laid down the broad and universal postulate that all we hold in society of human right, or under government of human liberty and sovereignty, is simply in the nature of a commercial *quid pro quo*. He says we make a bargain with a man for his services for a specified time, whether as a laborer, an associate in business, or a representative of the people; or society agrees with a citizen for the protection of his life, liberty and sovereignty, and opens its political ledger with him for the especial security of the latter, solely on the condition of self-support. It is all one and the self-same thing. The gentleman has laid down the Procrustean bed on which all must lie. When the bargain is concluded by the occurrence of pecuniary dependence there is an end of all reciprocities of kindness and humanity. Is it come to this, Mr. Chairman, in this enlightened age of the world, that a citizen must be told, because through misfortune in business and the infirmities of age he has ceased to support himself, that society owes him nothing; his obligation with society being that during his relation with and existence in it he must support himself? That this is the bargain which society makes with every individual; as the ground of his stand-point in the social state and his right to political existence, that he must never be weak



opportunity to improve themselves—and if it shall be found hereafter that they have been so far improved and acquired so much knowledge and information as to enable them to exercise the right of franchise properly and beneficially, then the people of this State may confer that right upon them. The principle of my amendment is that this franchise shall not be enjoyed until those upon whom it is sought to confer it, shall have the opportunity of acquiring the necessary intelligence and information to enable them to exercise it properly. I do not propose, sir, as I have already said, to disfranchise any, but to leave the matter as it now stands—to allow those who now have the right under the existing Constitution to retain it, and to confer that right upon all those who may hereafter be born in this State, so that we may insure the possession by this people, as a class or race, of the necessary qualifications to enable them to exercise the right properly. I am free to say that were we here to legislate for individuals—if I myself had the right to select individuals from one race or the other who should have the right to vote, there are some who now have the right from whom I would be very willing to take it, and I would confer it upon others who though competent by reason of their intelligence and education to exercise do not now enjoy it. But, sir, we are not legislating for any particular individuals, but for an entire race. If I could be satisfied in my mind that the objections I here urged against this class or race are not sound, and that, as a class or race, they possess the necessary qualifications of intelligence and information, I might be willing to open the door to all. But, sir, that is a responsibility I do not feel called upon to take. It is a matter which the people of this State must pass upon themselves. I disagree, sir, entirely with those gentlemen upon this floor who say that they are unwilling to submit to the people of this State for their consideration, as a separate proposition, any measure which does not meet their own hearty approval. On the contrary sir, if any respectable minority of this House shall propose any measure which it desires to have submitted to the people separately, so that their views might be taken upon that question independently of all other questions, I shall be perfectly willing to submit it whether I approve it or not. I am willing to submit as a separate proposition the question of female suffrage, or that of negro suffrage, or any other proposition involving important principles which any respectable portion of this body may desire to submit in that way. Mr. Chairman, I have had another object in drawing the amendment in the language in which I have. I desire, if possible, to embody in the Constitution of this State the assertion of a principle, the correctness of which I believe, and for which I shall contend, and that is the principle which I enunciated yesterday, viz.: the unqualified and exclusive right of the people of this State, in their sovereign capacity, to determine who shall and who shall not exercise the elective franchise within its limits. I have drawn this amendment for the purpose of asserting the exclusive right of

this State to do that, and for the purpose also of denying any claim which might be made, or any inference which might be drawn that we recognize the right of the Federal government or any branch of the Federal Congress, to interfere with us in that regard. I wish to draw the attention of the Convention to the language of a proposed amendment of the Federal Constitution and also to the language of the bill which has been proposed in Congress on this subject. As I said yesterday, I believe in that doctrine. I believe that the people of this State have the right to prescribe who shall be entitled to the right of franchise, within its territorial limits, and further, I believe that it is an exclusive right, and one in respect to which we cannot submit to be interfered with. The right to vote exists by virtue of citizenship of the State and not by virtue of any citizenship of the United States, if any such thing there be. Congress has no right to interfere in regard to this matter. It has no power to determine who are, and who are not, citizens of the United States. It has no power to legislate in regard thereto, except such as is conferred by the Constitution, and such power is limited to the passage of uniform laws, in regard to the naturalization of aliens. That power is conferred by the Constitution and is derived from the States themselves, and it would be strange if the States could confer a power which they did not themselves possess, and which they could not exercise or control. It seems to me very plain and clear, from the fact that the only power that Congress has is derived from the Constitution—that such power is restricted to the passage of uniform laws in regard to naturalization, and that such power is conferred by the States themselves, that the States must possess full and complete power to regulate and control the franchise so far as it is to be exercised within the respective States. I called the attention of the committee yesterday, very briefly, to the language of the proposed fourteenth amendment to the Constitution of June 16, 1866. The first section of that amendment is as follows:

“All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.”

Now, if the argument of gentlemen upon this floor be correct, that this right of franchise is a privilege or immunity, or is a natural right, or one of those privileges mentioned in the second section of the fourth article of the original Federal Constitution, and which follows the person of the citizen in every State to which he may go, it would necessarily follow from the language of this proposed amendment to the Federal Constitution, just read, that after its adoption no State could pass or enforce any law giving to its own citizens, or to those whom it might choose to make citizens, the right to vote, or which should prevent any class of persons within its limits



(including citizens of other States) from exercising such right. I am opposed to any such construction, and I deny that Congress has any power in the premises. The second section of the same amendment, to which I desire to call the attention of the committee, is this:

"Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in the rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

This section, therefore, in substance, provides that if we undertake here to deny to any male citizen of the United States, who is an inhabitant of this State, this right to vote, then our basis of representation shall be lessened. If the first section be regarded as valid and in force, then every person born in the United States, or naturalized citizen, without regard to race or color, is a citizen of the United States, and under the second section of the proposed amendment, is entitled to vote without any restriction whatever, on the part of the State. The substance of the amendment referred to is simply this: that any native born or naturalized citizen of the United States, who becomes an inhabitant of this State shall be admitted to vote on the same terms as any other inhabitant of this State shall be entitled to vote, and that if we attempt to abridge this right in this State, we shall be punished by a reduction of our representation in the proportion which the number of the male inhabitants so injuriously discriminated against may bear to the whole number of male citizens of the age of twenty-one years in this State. I desire, therefore, to present this question directly to this committee and to the Convention, and to ascertain whether or not the doctrine is to be established by this Convention, that the people of this State shall not regulate and control this right of franchise, or whether such right shall be enjoyed by all persons who may be declared by Congress to be citizens of the United States, without any restriction, and without any right on our part to impose restrictions, save under the penalty above provided. But, sir, that is not all. For the purpose of showing that the amendment referred to is susceptible of the construction which I have suggested, and that there are some who are disposed to give it such consideration, I invite the attention of the committee to the bill which has been introduced into Congress during its recent session. The bill provides as follows:

"That every citizen of the United States, who may have been a slave or the descendant of a

slave, or by reason of race or color deprived of equal rights, shall, in every State and Territory, have the right, if not otherwise disqualified to be registered and to vote at all elections for members of Congress, for presidential electors, for representatives and senators to State or Territorial legislatures, for all State, county, city, town, and other officers of every kind, upon the same terms and conditions, and no other, as white citizens are, and may be allowed to be registered and to vote; and every State and Territorial Constitution, statute, and ordinance which is now or hereafter may be enacted, and every custom and principle of law heretofore recognized in any State or Territory, contrary to the foregoing provisions, are hereby declared null and void."

That brings up the question directly and squarely whether or not this right of franchise is to be enjoyed within the territorial limits of this State, under the conditions and subject to such restrictions and modifications as we may impose, or whether it is to be enjoyed under some permission to be accorded by the Federal Congress, entirely irrespective of the control of the people of this State and those who may represent it. I have, therefore, drawn my amendment for the purpose of bringing the Constitution which we may frame directly within the reach of the first section of the proposed amendment to the fourteenth article of the Federal Constitution, and also directly within the reach of this proposed bill in Congress, so that it may be seen whether or not we are to take a stand in regard to the right of the State to restrict those who may be here and to control the right of the elective franchise, or whether it is to be entirely taken from us and to be disposed of as Congress may see fit to grant. If Congress has that power then our time has been wasted, and we may as well go home, so far as any good we may do here.

Mr. RATHBUN — Will the gentleman [Mr. Burrill] allow me to ask him a question? I would like to know whether what he has read is a law or only a bill?

Mr. BURRILL — It is a bill introduced. I have said all I desire to say in reference to this subject, and I shall have accomplished my object if I have directed the attention of this Convention to the consideration of the important principles involved in the discussions before this committee. As I have already said, my amendment does not seek the disfranchisement of any class which now has the right; on the contrary, it opens the way to secure this right to persons born hereafter. It also brings forward prominently the question which must at some time be determined, whether the State shall control the question of franchise, or whether it shall be determined by the Federal Legislature.

Mr. HUTCHINS — I would like to know from the gentleman [Mr. Burrill] whether I correctly understood him to say that the Constitution of the United States nowhere recognizes a person as a citizen of the United States?

Mr. BURRILL — No, sir; I did not say so.

Mr. AXTELL — I am opposed to the amendment offered by my friend from New York [Mr. Burrill], and I am in favor of the report of the majority of the Committee on the Right of Saf-

frage, and also in favor of the amendment to that report offered by the gentleman from Cayuga [Mr. C. C. Dwight], in so far as they both relate to the colored question. The purpose of the report is evidently to remove one of the vexed questions of political dissensions, and I sustain the report for the same purpose, not because I am prone, from my profession, to indulge in political animosities as my colleague, the gentleman from Clinton [Mr. Weed] the other day intimated—and at this point I may be allowed to say that neither the profession to which I have the honor to belong, nor any member of it, need apprehend any particular damage, either from the flings or commendations of that gentleman. The report of the majority of the committee, and the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] alike propose to remove this question from party discussions. I have been accused upon this floor of attempting to make a party issue on this question, whereas it has been my constant aim and desire to remove it entirely from the field of party politics. I am tired of this discussion of the negro. Though never to any extent mixed up with the discussion of it by words, I have heard and seen the subject discussed with other arguments. I have heard and seen something of a discussion with other arguments—cannon shot and shell and rifle balls—in which the main proposition under discussion was the principle of the gentleman from New York [Mr. Burrill] in regard to the supremacy of State citizenship, and the question of the colored man as an incident. The discussion of that main proposition ended with the surrender of Mr. Lee at Appomattox Court-House; and when that mode of discussing the subject was ended, I did hope that the whole subject was closed, so far at least as it relates to the policy of this State, but I have been disappointed; the question has been re-opened by the gentlemen of the opposition, and for what purpose they best understand, but these gentlemen well know, that, but for the attitude they have assumed in this Convention, the question in this State, was practically closed. I have been also accused on this floor of charging the democratic party with the riots of 1863, and that the party is largely composed of criminals. No language of mine justifies any such accusation. I remarked that the criminal classes would vote against the full enfranchisement of the colored man if the question were submitted separately, and thus made a party issue. I have no doubt that there are criminals in the republican party as well as in the opposition. I instanced certain classes of criminals, among them those who burned negroes, thinking, of course, that those who had no scruples that prevented them from burning negroes in 1863 might possibly be so tinged with prejudice as to vote against giving them equal rights in 1867, but in referring to this I utterly disclaim any intention of charging the democratic party with the riots of 1863. Those rioters may have been the political friends of the gentleman from Clinton. From his sensitiveness I conclude they were, but that was no charge of mine, nor fairly inferable from anything said by me. And in connection with that remark I distinctly declared my opinion that

the better and more respectable classes of the opposition, equally with the party with which I have the honor to be associated, would, if the subject could be disentangled from party and partisan animosities, vote for removing this class distinction, as proposed by the report of the majority of the committee. There are, to be sure, some respectable men of that party, whose aristocratic and monarchical tendencies would cause them to vote against any extension of suffrage—some of the political associates and neighbors of my colleague the gentleman from Clinton [Mr. Weed]—who think and proclaim that republican government is a failure, and that monarchy is the only form of government fit for a gentleman to live under—men who publicly thanked God during the war for the asylum for the oppressed found in Canada; but the loyal and liberal-minded men of that party, if the question shall be untrammelled, will vote for equal rights and equal privileges. The sending of this question to the people, as the report of the committee proposes, without any proviso in the Constitution for a separate submission, without anywhere in that instrument recognizing or admitting the rightfulness of a class distinction—does in itself disentangle the subject from party politics. It places before the people an instrument symmetrical and complete, embodying the views of the most of the gentlemen of this Convention upon the propositions which are the subject of it. Now sir, is not this mode presented by the majority report the fair and manly mode of presenting this subject? Is it not manly and honest, as contrasted with the attempt to defeat the reform by the political strategy of separate submission. The gentleman from Clinton [Mr. Weed] stated some time since that I gave as a reason for opposing separate submission and sustaining the report of the committee, that I feared if separately submitted, it might be defeated. But in that he misrepresented me, though without doubt unintentionally. I did say that there was a possibility that it might be defeated, but is this by any fair interpretation to be twisted into a confession that we are afraid of defeat? To take the proper means to prevent defeat does not in any wise imply a fear of defeat? We are not afraid of defeat, because we intend to use the proper and wise precautions which will prevent defeat. Let me show the absurdity of the position of the gentleman from Clinton and others by referring to an incident. On one occasion, during the late war, we found ourselves, after some hard and successful fighting in the morning, with two loyal divisions in front of a formidable position of the enemy, with orders to attack at a certain time. There were three strong bastioned forts. Between our division and the center fort which we were to attack, was a distance of about 1400 yards, covered with a tangled mass of fallen timber; through these obstructions we were to move under the fire of forty or fifty pieces of artillery. Now sir, suppose the noble man who commanded our division on that terrible day, had said to his superior, allow me to suggest that over there to the left is a smoother field unobstructed by this tangled mass; our approach will be easier; we can form our line in that ravine and get much nearer the fort before

receiving their fire; if we are put in there we shall be far more certain to succeed; if we are compelled to move through all these obstructions there is a possibility of failure. Stop, says the superior; you are admitting that you fear defeat; that is cowardice; it will be cowardly to do as you propose. But, general, cannot you see that there is a combination of circumstances which makes our success almost an absolute certainty if you put my division in, in the manner I have indicated? No matter, sir, no matter; to move your division over the smoother ground would be to confess a fear of defeat. Now, sir, we are to-day in front of this last stronghold of class prejudice in this State. We propose to storm this stronghold and level it to the ground. To advance to the attack by the way of separate submission, is to move through a tangled mass of prejudices and partisan passions, and party discipline, and under a fierce cannonade of party misrepresentations—

The CHAIRMAN—The Chair must call the gentleman [Mr. Axtell] to order. Under the resolution adopted, the question of a separate submission cannot be now discussed.

Mr. AXTELL—Can I proceed in order?

Mr. WEED—I trust the gentleman [Mr. Axtell] may be allowed to go on.

Mr. AXTELL—To advance by the way of combined submission, as indicated in the majority report, is to remove at the outset the obstructions of party passions and prejudices, to silence the guns of the enemy, and secure the success of the attack. Which mode shall we choose? Which is wise? We have the power of choosing our mode of attack, and our *point d'appui*. Shall we allow our enemy to choose them for us?

Mr. NELSON—I move that the committee do now rise, report progress, and ask leave to sit again. I make this motion to enable me to move in Convention that all speeches in Committee of the Whole be hereafter confined to five minutes.

The question was put on the motion of Mr. Nelson and it was declared lost.

The question then recurred on the amendment of Mr. Burrill and it was declared lost.

Mr. GRAVES—I offer the following amendment:

The SECRETARY proceeded to read the amendment as follows:

Add to the first section:

And all women of lawful age of like citizenship, may vote for the same officers at the same elections—if, at an election to be held on the first Tuesday in June, 1868 (at which women alone over the age of twenty-one years, shall vote), a majority of all the votes given shall be in favor of exercising the elective franchise.

Mr. GRAVES—Mr. Chairman—

Mr. FOLGER—I would ask the Chair if the amendment proposed by the gentleman from Herkimer [Mr. Graves], does not include the idea of a separate submission.

The CHAIRMAN—The Chair is of the opinion that strictly it does. The amendment, is not in order, except the first part.

Mr. GRAVES—I do not ask a separate submission of that amendment. I only ask, under that resolution, that at an election to be held in

June, 1868, if a majority of the women shall decide that they desire to vote, they shall be entitled to vote.

The CHAIRMAN—The gentleman from Herkimer [Mr. Graves] has the floor.

Mr. FOLGER—Do I understand from the Chairman that the point of order is abandoned?

The CHAIRMAN—The Chair understands the proposition to be not for a separate submission of the proposition to the people, but a proposition to accord to woman the right to vote dependent upon their determination of the question.

Mr. FOLGER—It is, then, not only a separate submission of a clause of the Constitution, but it provides for a submission of the question to a separate class. It has two elements of separation, and it is, therefore, doubly objectionable, and comes within the scope of the resolution offered by the gentleman [Mr. Graves] himself.

The CHAIRMAN—The Chair concurs entirely with the gentleman from Ontario [Mr. Folger], but it has endeavored to give the gentleman from Herkimer [Mr. Graves] an opportunity to be heard. The attention of the Chair having been again called to the subject, it must rule that the proposition of the gentleman [Mr. Graves] is out of order. The gentleman can take an appeal from the decision of the Chair if he desires.

Mr. GRAVES—If it is so understood under the rule I will acquiesce.

The CHAIRMAN—It is so understood under the terms of the gentleman's own resolution by which the subject of separate consideration was deferred to a future period. Does the Chair understand the gentleman as appealing from its decision.

Mr. GRAVES—If an appeal will give me the opportunity of discussing the merits of the question, I appeal.

The CHAIRMAN—The Chair cannot put any bounds upon the gentleman's ideas in regard to the matter; but if the gentleman [Mr. Graves] departs from the matter of the appeal to debate the ground of his amendment, the Chair will feel compelled to call the gentleman to order. The gentleman from Herkimer appeals from the decision of the Chair. The question is shall the decision of the Chair stand as the judgment of the committee.

Mr. GRAVES—I was about to state, Mr. Chairman, that the rule adopted by the Convention limiting debate to twenty minutes (which is very properly enforced by the Chair), has compelled me to abridge the remarks which I intended to make and which are due to the question, and to present briefly, as I must, although in an undesired form, some of the reasons for seeking by this amendment to make conditional that which now appears to be unrestricted suffrage.

The CHAIRMAN—The Chair must call the gentleman from Herkimer [Mr. Graves] to order. He has no right to discuss the merits of the question on an appeal. The question pending is shall the decision of the Chair stand as the judgment of this Committee?

Mr. CURTIS—Is that a debatable question?

The CHAIRMAN—It is within certain limits.

Mr. GRAVES—I withdraw the appeal.

Mr. CASSIDY—I offer an amendment, which I have sent to the Secretary.



The SECRETARY proceeded to read the amendment as follows:

Add to the section:

This section shall not apply to any man of color who shall not be an actual resident of this State at the time when this Constitution shall go into operation, unless such man of color shall have been for the five years immediately preceding, an actual resident of this State.

Mr. CASSIDY—The object of this amendment is to place colored men, recently emancipated, upon the same basis as foreigners coming from Europe, who are compelled to reside five years in the country before they attain the full rights of citizenship.

Mr. HUTCHINS—I would ask the gentleman from Albany [Mr. Cassidy] if that amendment includes white men who came from the South and voted in New York last fall?

Mr. CASSIDY—No, sir, it only applies to negroes.

The question was then put on the amendment of Mr. Cassidy, and it was lost, on a division, by a vote of 37 to 77.

Mr. MASTEN—I have an amendment which I desire to offer, and which is designed to be a substitute for the second section.

The SECRETARY proceeded to read the amendment, as follows:

"SEC. 2. Laws may be passed excluding from the right of suffrage all persons who may have been or may be convicted of bribery or of any infamous crime; laws may also be passed for permitting and for depriving of the right of suffrage persons who shall pay or contribute, or agree to pay or contribute, or who shall receive or agree to receive any money, property or valuable thing to promote the election of any particular candidate or ticket, or who shall make or be interested in any bet or wager dependent upon the result of any election."

Mr. MASTEN—I am as anxious as any gentleman in this Convention, that the purity of the election shall be preserved, and that all measures within the power, either of this Convention or of the Legislature, shall be resorted to, to accomplish that end. Now, I propose this amendment, for the purpose of giving to the Legislature the entire control of this matter. It is impossible that we should put in this Constitution a code of laws against bribery, and the only way to secure a competent and perfect code is by conferring ample powers upon the Legislature, so that the Legislature, from time to time, may perfect a code of laws in respect to that subject. Now, for the purpose of showing concisely the fallacy of thus undertaking to place in the Constitution itself a code against bribery, or a code of laws on any subject, let us turn for a moment to the first branch of the report; the word "felons" is used there. I suppose it was not the intention of the honorable chairman [Mr. Greeley], who made that report, that persons who had been sentenced to be confined in the State prison, should immediately on their coming out, be allowed to vote; still they would be permitted under the section reported by the committee. The word "felon" has a well known signification at the common law; and there are offenses now punishable by

imprisonment in the State prison, which are not felonies; they were a misdemeanor at common law and the aggravating of the punishment does not make a misdemeanor a felony, nor does it change the character of a crime simply by reducing its punishment. Now the object doubtless is to protect and secure the purity of elections; that is the object on all hands. It will be found, sir, upon an examination, that the laws now in force upon our statute book are much more stringent and go much farther for the protection of the purity and freedom of elections than does anything that is contained in the report of this committee or in any of the amendments which have been proposed. That shows us, sir, the importance of leaving the whole of this matter to the Legislature, and giving them ample power to pass all the laws that from time to time may be found necessary to secure meet devices and to secure the highly desirable end of making our elections pure and free. This provision, as it now stands may possibly raise another question, whether the inserting a provision in the Constitution in respect to particular cases may not take away from the Legislature the power of going beyond that which is contained in the Constitution itself, upon the doctrine that the expression of one thing excludes the other—*expressio unius, exclusio alterius*; and for these reasons I think it is wise to give to the Legislature the most ample powers, and to leave it entirely to them instead of undertaking to insert a code against bribery, or against the purity of elections, in the Constitution itself.

Mr. MILLER—I am strongly inclined to favor the proposition just offered by the gentleman from Erie [Mr. Masten]. I have not been able fully to catch every sentence in that amendment; but, sir, I am of the opinion that we shall do wisely if we shall leave the formation of the law—its minutiae and machinery by which to prevent bribery and corruption at the polls—to the Legislature to enact instead of trying to put the provision in the Constitution itself. I think that a majority of this Convention are of one opinion in regard to the object sought to be attained. I think that we are all agreed that the improper use of money at the polls is a great and growing evil, and the only difference of opinion is as to the proper remedy. I, sir, am of the opinion that if we undertake to put the provision into the Constitution without any legislation we shall find that the schemes of designing men will get around or through the provisions that we shall frame. And, Mr. Chairman, I think that a legislative enactment has this one great advantage over any provision of the Constitution, that it is liable to be, and can be changed as experience and trial shall show the necessity for it. We all know what we want to reach, and what the evil is that we want to remedy, but if we fail in providing the exact remedy, the failure must stand for twenty years, if the remedy is only a constitutional provision: but if we indicate strongly to the Legislature our object and intention, and make it their duty to pass the law, if they fail at the first session, their failure can be remedied the next year, and as trial and experience shall show defects, we can have other remedies applied. Now this crime, as it will be a crime if we make it so—this great



evil of the use of money at elections, is one that it would be very difficult to prevent at the first trial. Sir, if we make it a crime, it is a crime, in which two persons are only necessarily engaged; they are both equally guilty; neither of them has any motive for exposure, and it will be almost impossible to reach it except by the most carefully drawn provision of law, or provision of the Constitution. I like the plan proposed by the committee that it shall be made a ground of challenge, and that the person so challenged shall not vote until he shall purge himself by express denial under oath; but we can so instruct the Legislature to frame a law with that provision in it, and if we leave it with the provision in the Constitution, without any legislative enactment in aid of it, I am afraid that our law will be found defective. If it is too narrow it will be evaded and dodged. If it is drawn loosely there will be some loop-hole that men will get through; and if it is drawn too broadly as I thought the proposition of the gentleman from Schenectady [Mr. Landon] was, if it reaches objects that public opinion will not say are corrupt, if it goes so far as to shut out the legitimate use of money which public opinion approves, it will fall into disuse, disrespect and neglect. I think the only safe way is to leave the matter, with proper instructions and authority, to the Legislature to enact a law.

Mr. CASSIDY — The difficulty which the Committee on the Right of Suffrage had in regard to that, desirous as they were of leaving this to the Legislature, was that the Legislature could enact no law requiring in addition to the qualification of age, residence, citizenship, etc., any further requirement. No law which the Legislature has been able to pass within the past twenty years, has given a person the right to challenge a voter on the charge of bribery. It cannot be done under the existing Constitution, or under any other proposition here made. In order to make it a ground of challenge, it must be specifically included in the Constitutional definition. It is not sufficient to say that the Legislature may pass laws to prevent and punish bribery. They have always had and have exercised that power, but unavailingly. What is wanted is to make it a ground of challenge.

Mr. MASTEN — My amendment is to deprive him of the right to vote.

Mr. CASSIDY — The amendment deprives him of the right to vote in further elections upon trial and conviction—that is the extent to which the amendment of the gentleman from Erie [Mr. Masten], reaches. This provision is a self-executing one. It applies only to the election at which the person presents himself. It allows him to purge himself of the accusation upon his own oath, and it invokes to its execution the vigilance and even the animosities of the contending parties. If after elections we trust to parties and individuals to secure the punishment of those who have been guilty of bribery or who have violated some law in regard to the elections, we look to resources which are perfectly unavailing, as the experience of twenty years has shown. We must, therefore, in some form or other, make it the ground of challenge in some effectual and simple manner. I think that is accomplished by the

provision as reported by the committee and amended by the gentleman from Schenectady [Mr. Landon].

Mr. HALE — I wish to inquire if the amendment is proposed to the amendment offered by the gentleman from Ontario [Mr. Folger]?

The CHAIRMAN — It strikes out the second portion of the amendment of the gentleman from Ontario [Mr. Folger], and inserts this in lieu thereof.

Mr. HALE — I would further inquire whether the amendment proposed by the gentleman from Schenectady [Mr. Landon] was adopted?

The CHAIRMAN — It was adopted and became a part of the amendment of the gentleman from Ontario [Mr. Folger].

Mr. HALE — I would suggest, therefore, that the amendment, as proposed by the gentleman from Erie [Mr. Masten], would be incongruous with the amendment already adopted by the committee.

The CHAIRMAN — The Chair would inform the gentleman from Essex [Mr. Hale] that the gentleman from Erie [Mr. Masten] offers his amendment as a substitute, and, therefore, it takes the place of the second section.

Mr. LANDON — If this matter shall be referred to the Legislature to pass the laws necessary to prevent bribery and corruption at the election, it may be, from weakness of the Legislature or their indifference to that subject, that such laws may not be passed; or, if passed and referred to the courts to carry out their provisions, if we do not retain in our own hands the means by which we can enforce these provisions upon the day of election, I am fearful, sir, that we shall fail in preventing the corruption and bribery which all men deplore; but if we leave this matter so that we, the electors of the State, upon the day of the election, when we are eager and in earnest in regard to this matter, can apply the remedy, can then and there, by challenge and immediate proof, ascertain and exclude the corruptionists, we shall be able to stem the tide of corruption which now influences the elections. If we put this matter in the Constitution itself, we shall thereby be able to satisfy the people of the State that we do intend to put an end to bribery and corruption. If we refer the matter to the Legislature, we shall subject ourselves to the suspicion that we are not in earnest in regard to it, and the people will doubt whether we do not really desire to leave this matter so that the Legislature may pass a law through which fraud can drive a coach and four rather than pass one which shall effectually repress bribery and corruption. If it is feared that there may be some defect in this constitutional provision which shall not fully carry out the purposes we have in view, then I would suggest that there be added to the provision as it now stands the further provision that the Legislature may, by appropriate legislation, fully carry into effect the objects and purposes of this provision. Then we shall have not only the constitutional enactment, but we shall place it within the power of the Legislature itself to add to that, so that if the constitutional enactment fail, then the Legislature can step in; and, if honest and earnest in its

purposes, can supply the defect, and in that way bribery and corruption can be suppressed.

Mr. A. J. PARKER—I think the objection which is made by my colleague [Mr. Cassidy], to the amendment of the gentleman from Erie [Mr. Masten], can be obviated by inserting two or three words. After the word "suffrage" there should be added the words "and exclude on challenge." This would give the Legislature power to enact a law to exclude on challenge.

The CHAIRMAN—There being two amendments pending, the amendment is not now in order.

Mr. A. J. PARKER—Then I suggest it be accepted by the gentleman from Erie [Mr. Masten].

Mr. MASTEN—If I have the power, I will accept it.

Mr. A. J. PARKER—And that he also substitute the word "shall" in the first line, for the word "may" so as to make it imperative upon the Legislature to pass such laws.

Mr. MASTEN—I will accept the suggestion.

Mr. PAIGE—I have come to the conclusion, sir, that there are but two remedies for bribery and corruption at the elections that can be effective. One is to provide in the Constitution that the sale of and trafficking in votes be a ground of challenge at the election, and the other is, that the successful candidate, after election, take and subscribe an oath that he has not used money for the purchase of votes, or for any other purpose of promoting his election. The gentleman behind me referred to a resolution offered by me and referred to the Committee on Suffrage, as being too sweeping in its character. I have prepared an amendment that I intend to offer before this article is disposed of, excepting from the oath such expenses as are now authorized by law for defraying the expenses of printing tickets, etc., but requiring the candidate to specify the several sums of money so expended, the purposes for which it was expended, and the names of the persons to whom paid. Now, sir, if we incorporate these two provisions in the Constitution I think we shall remedy, or at least diminish, the crying evil of corruption at our elections. This amendment by the gentleman from Erie [Mr. Masten], as I understand it, is not incompatible with either of the provisions to which I have referred. He aims at authorizing the Legislature to enact laws excluding from the right of suffrage those who have been convicted of bribery. This section authorizing the Legislature to pass laws, refers to a disfranchisement, to an exclusion from the right to vote at all elections, until this punishment is remitted, whereas the provision in the section reported by the committee, making the purchase and sale of votes a ground of challenge, only applies to the pending election; therefore, sir, the proposition of the gentleman from Erie [Mr. Masten], is not, in my judgment, inconsistent with the provision in this article reported, making it the ground of a challenge.

The CHAIRMAN—The Chair would inform the gentleman from Schenectady [Mr. Paige], that the proposition of the gentleman from Erie [Mr. Masten], strikes out the proposition of the gentleman from Ontario [Mr. Lapham].

Mr. ANDREWS—I agree with the gentleman from Delaware [Mr. Miller], that the better course

to pursue with respect to the subject-matter under consideration, is to give sufficient authority to the Legislature to legislate on the subject; than it is to attempt to define in the Constitution itself, the causes and the circumstances which shall exclude a voter from the right to vote, and I, therefore, prefer substantially the second section as contained in the amendment of the gentleman from Cayuga [Mr. C. C. Dwight], to the one contained in the report of the Committee on Suffrage. I take it, sir, that there is no division of opinion in this committee as to the propriety of providing in some way, if possible, to protect the purity of elections. And, sir, I think that it will be better attained by prescribing the boundaries of the power of the Legislature in the Constitution itself over this subject, leaving it to the Legislature from time to time to adjust legislation according to the necessities or exigencies which may arise, than in any other way. But, sir, it occurs to me that the amendment now pending, proposed by the gentleman from Erie [Mr. Masten], if I properly understand it, is too broad in its scope and application, because, as I understand it, it excludes from the right of voting all persons who have contributed in any way to secure the success of a particular candidate or a particular party. I think, sir, that that amendment would at least create doubt, whether a great many contributions for the general purpose of affecting the result of an election, and which are proper in themselves, would not be prohibited. It strikes me, sir, that the original resolution substantially covers what will be required in the case, and while I would not prohibit contributions having a tendency to disseminate in a proper way information among the electors, and thereby indirectly promote the success of a particular party, I would point legislation to the particular evil to be reached, to wit: The effort, by the use of money, to reach and control the individual voter at the time of giving his vote; and it seems to me, therefore, that while in favor, as I am, of the general principle on which the amendment of the gentleman from Erie [Mr. Masten] is placed, that it is better to reject that, in the form in which it is presented, for the purpose of recurring to and reaching the provision already pending before the committee upon the amendment of the gentleman from Cayuga [Mr. C. C. Dwight].

Mr. KERNAN—I desire, before this question is passed upon, to express my very strong conviction that it will not be best nor wisest to remit this matter entirely to the Legislature. I think that, at least, we should have in the Constitution a provision that it shall be a cause of challenge of the elector that he has paid or promised to pay, received or expects to receive money, or other valuable consideration to influence votes, and if that challenge is not withdrawn he shall be required before he votes to purge himself by oath from the charge. I would have the provision substantially as in the amendment, or in the report of the committee, that he may be challenged for that cause, and required to take his oath before he votes, and if he do take the oath denying the cause of challenge that then he be allowed to vote. So far as punishing him otherwise than by prevent-

evil of the use of money at elections, is one that it would be very difficult to prevent at the first trial. Sir, if we make it a crime, it is a crime, in which two persons are only necessarily engaged; they are both equally guilty; neither of them has any motive for exposure, and it will be almost impossible to reach it except by the most carefully drawn provision of law, or provision of the Constitution. I like the plan proposed by the committee that it shall be made a ground of challenge, and that the person so challenged shall not vote until he shall purge himself by express denial under oath; but we can so instruct the Legislature to frame a law with that provision in it, and if we leave it with the provision in the Constitution, without any legislative enactment in aid of it, I am afraid that our law will be found defective. If it is too narrow it will be evaded and dodged. If it is drawn loosely there will be some loop-hole that men will get through; and if it is drawn too broadly as I thought the proposition of the gentleman from Schenectady [Mr. Landon] was, if it reaches objects that public opinion will not say are corrupt, if it goes so far as to shut out the legitimate use of money which public opinion approves, it will fall into disuse, disrespect and neglect. I think the only safe way is to leave the matter, with proper instructions and authority, to the Legislature to enact a law.

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do not desire to speak of that class of citizens in this country with disrespect; but I will say this, that the Puritan character is a many-sided crystal, and on some sides shows a deeply discolored face. I need not dwell upon the earlier history of this country when the Puritan shook hands with Georgia and secured for us the slave trade, nor the period when the Puritan engaged in the manufacture of New England rum to debauch the country. It is right that repentance should begin at home. It is right that the Puritan should undertake an anti-slavery crusade in his own State, and a Maine Law movement there. I do not object to that. But I do hope that you will remember, that the institutions of the State of New York were founded and moulded by men of Holland birth, by men not ashamed in that day to be known either as Irishmen or of Scotch or Cavalier descent. It is unfair in this tribunal of the people to speak of the Puritan ancestry as if that was the only source from which all purity could descend. It is very much like the pious nonchalance of Holy Willie, in Burns' prayer, when it is claimed that the Puritan in the State of New York is

"A burning and a shining light  
In a' this place."

Now, as I said before, I do not object to any gentleman in this Convention of the people undertaking to mature a wise system for the correction of these or other public mischiefs. If I have studied any of the facts in the history of this State since 1851 correctly, the evil of bribery in the planning and prosecution of political campaigns has grown up under the auspices of the dominant party, and I believe the credit and the duty falls to them of undertaking to perfect a proper and suitable system for correcting the evil which they themselves inaugurated. But I protest against abusing the body of the people in this hall of their representatives, as if all the people were corrupt, or as if the methods of corruption were to be singled or parceled out by localities. In the name of the people of the county which I represent, I enter my entire, candid and serious remonstrance. But to go back to what I have mostly in hand. Sir, if gentlemen are disposed to believe that the Legislature of 1853 had considered well their remedial propositions, if they are willing to imagine that there were matured after a long and protracted discussion, in which the minds of the most prominent jurists in that body were engaged, they may possibly derive some benefit from a brief statement of the result of their labors. In the first place, in the amendments as perfected by them, they desired to interpose in the second section of article 2, immediately after the word "election" these words: "or who shall pay, give or receive, or promise to pay or give any money or other property or valuable consideration, with intent to influence any elector in giving his vote, or to *deter* any elector from voting." We considered that the evil then was not simply the offer of money to induce a man to vote in a certain direction, but that there was a great influence exerted to deter men from the polls, or to induce them to withhold their votes, and when the time comes, I shall ask you to insert that clause in this article, so that you will not only make it a crime to influence

men to vote in a particular way, but you must also make it a crime to deter a man from voting or induce him to withhold his vote. Now, then, further on, the Legislature of 1853 proposed that laws should be passed for determining in a summary manner at the polls, all questions affecting the right of any person to vote thereat, so that section two as amended is very much in the spirit of the amendment proposed by the honorable gentleman from Erie [Mr. Masten]. But it is far more comprehensive, and it carries throughout this idea, that you have not only to provide against a positive corrupt voting, but from deterring, or hindering, or preventing men from going to or inducing them to stay away from the polls. And there is another class of cases which they thought a matter of some consequence, the reasons for which I need not enlarge upon, as probably some gentleman upon this floor will suggest more fully the grounds of such propriety, that was preventing corruptionists from holding any office voted for at such election. I think, Mr. Chairman, that when we have got fairly into a position where this amendment might be offered, the reasonable and the right-minded men of this Convention will not refuse their approbation. But as I did not get an affirmative answer to the question I proposed this morning, I desire now to discuss a part of the proposition of the gentleman from Schenectady [Mr. Landon]. Now, see what he desires. He wishes to deprive a man of the right of suffrage who not only receives but expects to receive some consideration. Very well; but, if you remember, he couples with that the right of challenge at the polls, so that it would be competent for the dominant party in the exercise of this power to require of every person who presented himself after the hour when all their party had cast their votes to submit to the test of this oath, and to swear that he had not only not received but that he did not expect to receive anything of whatever kind as the result of his action. I wish to know what is the effect of asking a man at the polls to swear that he does not expect to receive any possible return in consequence of a vote he gives. For, if I do not mistake the purport of this strict test-oath which you are now seeking to carry into effect, is to negative all possible expectation of receiving any possibly valuable consideration by reason of his vote.

Mr. M. I. TOWNSEND—Will the gentleman from Rockland [Mr. Conger] allow me to suggest what I suppose is the meaning of it?

Mr. CONGER—I will.

Mr. TOWNSEND—This, I understand, is often done at elections; indeed I have seen it done. A man says "Here is five dollars; you go and vote this ticket and you shall have this money."

Mr. CONGER—The remedy as provided by the Legislature of 1853 is amply sufficient if you challenge the vote of a man who agrees directly or indirectly to receive. To require of a man who is about to vote to swear that he does not expect in any way to receive any benefit covers too much ground. If you limit it to his expecting to receive money at any time after the election, I shall not interpose any objection. But when you couple with it not only money but valuable con-



ing him from voting at that election, this may be very well left to the Legislature; but to the extent of making this a ground of challenge, I think our experience is in favor of doing so. It is very easy to make the challenge; it is very easy, if the elector be honest, that he shall purge himself and vote; and I think we will find that such a provision in the Constitution will be very efficacious in preventing the evil complained of. When the elector can be challenged and required to take an oath at the polls, it will have a great deal more effect in preventing the corruption of which all complain than any penal system of laws which the Legislature may enact to punish him afterward. I therefore hope that the Convention will retain in some form that test of the purity of the elector, and then anything else that is desired in reference to punishing him otherwise, when he is convicted, may be very well left to the Legislature. I think with that provision, and with the other provision which I know several gentlemen design to introduce at the proper time, by which the person elected to office shall be required to take an oath to the effect that he has not used money improperly, will effect more reform than any system of legislation for punishing otherwise, however stringent it may be. And moreover, sir, I fear if we do not put this test in the Constitution, there will be a good deal of difficulty in getting laws enacted which shall effect the purpose which this will effect.

Mr. GRAVES—I move the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Graves, and was declared carried. Thereupon the Committee rose and the President resumed the Chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the Committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was then put upon granting leave and it was declared carried.

Mr. BELL—I move that we take a recess until four o'clock.

The question was then put upon the motion of Mr. Bell and it was declared carried.

So the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock, and again resolved itself into a Committee of the Whole, on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, Mr. ALVORD, of Onondaga, in the chair.

The Chairman announced the pending question to be on the amendment proposed by Mr. Masten to the amendment offered by Mr. C. C. Dwight.

Mr. CONGER—I deem it due to the committee to state that the subject now before it of putting a sufficient check upon bribery at elections, is one which has heretofore occupied the attention of and action in definite form by the

representatives of the people. It has long heretofore been admitted that the provisions of the Constitution of 1846 were not sufficient to cover the desired result. So, Mr. Chairman, when in the Legislature of 1853, in which I had the honor to have a seat, this subject was presented in view of the gross corruptions which had been practiced prior to that time, although they were not as great or as numerous as those which have since shocked the public sentiment, the Legislature, with great unanimity, passed a series of provisions amending the Constitution, to which you will permit me to draw your attention. Now, in view of what has been said, (and I wish to speak with no unnecessary reference to party distinctions) it ought to be remembered that the Legislature of 1853 had the reputation of being entirely a democratic body; and I advert to the fact for this purpose, to show why it was, and in what way the propositions matured in 1853 were lost, for as you are aware the Constitution required that they should be submitted to the Legislature at the next ensuing election of Senators. In pursuance of that requirement of the Constitution the amendments proposed by the Legislature of 1853 were sent down to the Legislature of 1854 of which it may be said that it was not only largely republican, but that they entirely ignored the attempt made by the democratic Legislature of 1853 to check the evil. Seeing what has occurred since, I deem it right and proper that the majority of this body should undertake to reform an evil which has grown to such great magnitude under their auspices. There is a great disposition here, Mr. Chairman, to allude to corruption in the body of the people. I think, with greater propriety, we might refer to the corruption which now exists in high positions. This morning, when this subject was under discussion, some allusion might have been made to the fact that a republican member from this State, of the House of Representatives had been ejected by Congress in view of the bribery practiced by him as a representative of the people. I do not wish to draw too strongly upon your historical recollections to ask if it was not notorious that no little part of the Washington schemes which culminated in his Congressional eviction were connected with the Albany scheme by which large sums of money or a large patronage was to be secured for his associates by canal contracts under the fraudulent lettings of 1851. But when we come to the facts as they are at the present day, and amid other like announcements find the Secretary of the Treasury complains that his officials, all loyal men, are so corrupt that it is impossible for him properly to collect the revenue, I submit we should not undertake here in our place to stigmatize the body of the people. If we make any inquisition, let us find out at whose door the fault lies. Who are the men that are guilty of these great crimes of perverting the franchise and attempting to corrupt the people. We had an admission here this morning by my honorable friend on my right, which would lead us to suppose that all these high crimes were confined to a certain class outside of that known as the Puritan. I

and corruption, and leaving it to the Legislature, it is preposterous in my estimation, and I am surprised that gentlemen will urge any such proposition as this, to leave to the Legislature the question of bribery and corruption. What have you heard here during these debates? Why, sir, it has been heard, and it is believed, and if it is not believed by the members of this Convention, it is believed by all the people, that, I will not say the majority of the Legislature is elected through bribery and corruption, but a large portion of its members are elected through this means. What do you propose to do? To leave to this very nice body so elected, and to be repaid through legislative corruption to pass laws against bribery and corruption—that is the proposition. That is the practical effect of it as I understand it. Why, sir, to leave to the Legislature the power to pass laws against bribery and corruption what is it? I do not mean any disrespect to many honorable members of the Legislature, but it would be setting a thief to catch a thief. Worse than that, sir, it would be empowering a thief to sit in judgment, and say how much punishment should be administered to a thief. That is the practical operation of that proposition as I understand it. Now, sir, the gentleman from Schenectady [Mr. Paige] presented a proposition here the other day; one of the most practical remedies against a particular kind of bribery and corruption. It is not entirely fresh in my recollection, but his proposition as I remember it, was that it should be part of the oath of a public officer, a member of Assembly, or a member of any public body, to swear that when he was elected he did not pay and use any money for his selection. That is the proposition, as I understand it in that of the gentleman. If I am wrong, I ask the gentleman from Schenectady [Mr. Paige] to correct me. Sir, there is something, there is good sense in that, there is the good sense of the jurist and patriot in that, in my humble opinion. Why, sir, if we have degenerated to this; if we have become so totally depraved that there is a person that will walk that aisle, and place his hand upon the Bible there and take the oath of office as a member of the Legislature and swear that he has paid no money when he has paid money; why, sir, I repeat, if we have become so totally depraved as that, there is no use of any more Constitutions or laws. The only punishment that can be inflicted upon such a person is a punishment beyond this world. If I should believe all the charges members of this Convention have made against the last Legislature—I must confess that I had lived long enough to change my mind upon the doctrine of total depravity. I should be glad to see some such provision as proposed by the gentleman from Schenectady adopted into the Constitution, and not leave the purification of the elective franchise to the easy virtue of modern Legislatures.

Mr. BECKWITH—I wish to inquire whether, if the proposition of the gentleman from Erie [Mr. Masten] prevails, it takes the place of the proposition of the gentleman from Schenectady [Mr. Paige].

The CHAIRMAN—The Chair understands that it is offered as a substitute.

Mr. BECKWITH—I am in favor virtually of both propositions. I believe it wise, on our part, to introduce into this Constitution a provision for the punishment of bribery, distinct and emphatic; one that would be clear to the understanding of every individual; and, while I do that, I am also in favor of making it the duty of the Legislature to provide by law to carry out that object and to make such provision as would render the full accomplishment of the object to be desired. The evil of which we complain is not to be reached by that single provision which the gentleman from Schenectady would have introduced, for, if I am correctly informed, the evil lies beyond it. One of the greatest evils is this.—You and I very well know, Mr. Chairman, that in many localities in this State the democratic party is largely in the majority, and in other localities the republican party is also largely in the majority. We know very well that certain individuals in these localities control these caucuses. They are your noisy, boisterous, bar-room politicians that control the nominations made at these caucuses; and we know that in some of these localities a nomination is an election, and if I am correctly informed, there are in certain localities in this State persons who take it upon themselves to say to the friends of certain candidates, “if your friend wants to be nominated—the nomination being an election—give us one thousand dollars, give us two thousand dollars, give us three thousand dollars, or some other sum, and we will secure his nomination.” And to the friends of other candidates for nomination they will say the same, and they will finally get up a strife and a bid, and I have been informed (I won’t say I have been correctly informed) that even the office of a judge has been tendered to men if they or their friends would secure to those men who control these nominations four thousand dollars, and that the friends of others have stepped in and said “We will give you five thousand dollars,” and they have thereby secured their nomination and their election. The reason why I am in favor of both propositions is this, that by the proposition of the gentleman from Schenectady [Mr. Landon] we cannot reach this evil, but if we make it the imperative duty of the Legislature also to provide those laws which shall carry out this object and all necessary laws to prevent bribery and corruption, we may possibly reach this evil and the others. I am, therefore, in favor of both propositions, but if I can have but one, I am rather inclined to prefer the proposition of the gentleman from Erie [Mr. Masten], for, if we obtain this provision only, it will not be sufficiently stringent, and will not meet all these evils.

Mr. SPENCER—I wish to suggest whether the great desire to impose penalties for the offense of bribery may not be sufficiently effectual to produce legislative action, from the fact that the business of bribery in high places, or as compensation for perversion of official duty in high places, may be more profitable if those who seek places in the Legislature of the State can escape the expense which grows out of the practice at elections. It has resulted in the necessity of buying votes, and they can get the same prices

siderations, I want to know what gentleman in this Convention who might be a candidate for office could take the oath, because every one knows that as the result of an election may be determined in his locality, he is more likely to receive a sufficient vote for some office for which he may be an expectant or a candidate. You make this thing too stringent on the general ground of an expectation, and the only practical effect, I think, is that you will put it in the power of individual challengers at a poll to obstruct an election, and when sundown is announced there may be thousands outside who have not had permission to vote. That occurred last winter in the city of New York; it is likely to occur there time and again. It might occur in any rural district where the majority, who sought to compass a majority vote, were resolute and persistent in this exercise of the right of challenge; for it is not merely the right of challenge but it is the right to require a man to take an oath, and that oath, according to your law, must be reduced to writing. According to any estimate that can be made, I think these oaths would take, at the least calculation, three minutes apiece. I ask you, gentlemen, to look at this thing calmly and carefully. It is sufficient in my judgment if you make a man swear that he has not agreed directly or indirectly to receive, but if you want to prevent the possibility of his receiving anything you can easily cover a promise to him to be available at a future day. You should devise some form of speech which will correspond with that form by which you attempt to shut off the man who offers to pay. The man who pays and promises to pay is more culpable than the man who receives, and when you go to him in all the forms that you have prescribed, either paying or offering to pay, promising to pay or giving money, and follow it all through the verbiage which you have got in this amendment which I need not now specify, you merely make that man swear that he has not paid or offered to pay, and you make the other man swear that he has not received nor has any expectation in general of receiving. I submit to the gentleman that the expectation of receiving is not a correlative of the offer to pay, it is of far more general force, and it has a more surprising effect.

Mr. LANDON — Will the gentleman from Rockland [Mr. Conger] allow me to ask him a question?

Mr. CONGER — Certainly.

Mr. LANDON — If that was struck out how would you meet the case where a man votes to-day and expects to receive that money to-morrow which he promises to pay.

Mr. CONGER — I admit the case ought to be provided for. But when you go on further and make a man swear that he does not expect to receive any money or other valuable consideration, do you not include those who are expectants of office in the general sweeping phrase of "a valuable consideration?" I desire the gentlemen to perfect their scheme. I do not interpose with a view to embarrass their efforts. Having voted for the proposition of 1853, it is too late for me, if I wished, at this day to retract, and I am perfectly willing to take the amendment proposed in 1853 and incorporate it in

the new Constitution. I am perfectly willing to go still further and make a provision more stringent. But I do ask gentlemen to look very carefully at what they are about, lest in any manner they go too far in the exaction of an oath upon a phrase which is very comprehensive, and carries with it more, in the connection in which it is placed, than I think gentlemen dream of.

Mr. BICKFORD — Will the gentleman allow me to ask him a question? Is not the provision you are considering necessary to prevent a state of things like these?

The twenty minutes having expired the gavel fell.

Mr. HATCH — Mr. Chairman, when this House generally goes into the Committee of the Whole, for the last two weeks, and the negro is up, as usual, I generally pass out; but I came in after the Committee of the Whole had been occupied sometime, to-day, and very much to my surprise, I have found another subject under consideration in the Committee of the Whole — bribery and corruption. I certainly congratulate the Convention on the change. I might say, sir, that for one I have had all the acquaintance I desire with the negro in politics. I don't want to be any further enlightened as to his capacity or incapacity, physically or intellectually. He has generally kept democrats out of public life for the last ten years [laughter], and I never could find any political capital in the negro, and I do not believe the democratic party will ever find any capital in the negro. And I am surprised, sir, too, when I find some of my democratic friends here still determined to try and see whether something could not be made out of the colored gentleman. Like a certain class of very desperate people, constantly engaged in a losing game, they still are determined to have another fight with that black tiger. [Laughter.] Sir, if I understand the amendment of the gentleman from Erie [Mr. Masten] the practical effect of the adoption of that amendment would be to exclude from the Constitution any provision against bribery and corruption. If I am mistaken about it, I hope I will be corrected. Now, sir, if this Convention proposes to do anything that is useful to the people, I believe any measure which they should inaugurate should be adopted in the Constitution. If the people had anything in view in calling this Convention, it was to take power out of the Legislature of the State of New York. I will not go into the reasons fully now why this should be done. Any man, if he does not know them, I ask him to go back to the journals of the Legislature of last year, and read from the journals the acts of the Legislature which they adopted, and above all to read those acts proposed which were beneficial to the people which they did not adopt. Those they did not adopt, on examination, would be found to belong to that class of measures, to use the common parlance of the lobby, which had no money in them. I ask them to read those; I could give some recital of them, for I had occasion to examine one to-day which I should be very glad to bring before the Convention in confirmation of my views, and I shall, before the Convention closes its labors. Sir, this proposition to exclude from the Constitution any provision against bribery



and corruption, and leaving it to the Legislature, it is preposterous in my estimation, and I am surprised that gentlemen will urge any such proposition as this, to leave to the Legislature the question of bribery and corruption. What have you heard here during these debates? Why, sir, it has been heard, and it is believed, and if it is not believed by the members of this Convention, it is believed by all the people, that, I will not say the majority of the Legislature is elected through bribery and corruption, but a large portion of its members are elected through this means. What do you propose to do? To leave to this very nice body so elected, and to be repaid through legislative corruption to pass laws against bribery and corruption—that is the proposition. That is the practical effect of it as I understand it. Why, sir, to leave to the Legislature the power to pass laws against bribery and corruption what is it? I do not mean any disrespect to many honorable members of the Legislature, but it would be setting a thief to catch a thief. Worse than that, sir, it would be empowering a thief to sit in judgment, and say how much punishment should be administered to a thief. That is the practical operation of that proposition as I understand it. Now, sir, the gentleman from Schenectady [Mr. Paige] presented a proposition here the other day; one of the most practical remedies against a particular kind of bribery and corruption. It is not entirely fresh in my recollection, but his proposition as I remember it, was that it should be part of the oath of a public officer, a member of Assembly, or a member of any public body, to swear that when he was elected he did not pay and use any money for his selection. That is the proposition, as I understand it in that of the gentleman. If I am wrong, I ask the gentleman from Schenectady [Mr. Paige] to correct me. Sir, there is something, there is good sense in that, there is the good sense of the jurist and patriot in that, in my humble opinion. Why, sir, if we have degenerated to this; if we have become so totally depraved that there is a person that will walk that aisle, and place his hand upon the Bible there and take the oath of office as a member of the Legislature and swear that he has paid no money when he has paid money; why, sir, I repeat, if we have become so totally depraved as that, there is no use of any more Constitutions or laws. The only punishment that can be inflicted upon such a person is a punishment beyond this world. If I should believe all the charges members of this Convention have made against the last Legislature—I must confess that I had lived long enough to change my mind upon the doctrine of total depravity. I should be glad to see some such provision as proposed by the gentleman from Schenectady adopted into the Constitution, and not leave the purification of the elective franchise to the easy virtue of modern Legislatures.

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The CHAIRMAN—The Chair understands that it is offered as a substitute.

Mr. BECKWITH—I am in favor virtually of both propositions. I believe it wise, on our part, to introduce into this Constitution a provision for the punishment of bribery, distinct and emphatic; one that would be clear to the understanding of every individual; and, while I do that, I am also in favor of making it the duty of the Legislature to provide by law to carry out that object and to make such provision as would render the full accomplishment of the object to be desired. The evil of which we complain is not to be reached by that single provision which the gentleman from Schenectady would have introduced, for, if I am correctly informed, the evil lies beyond it. One of the greatest evils is this.—You and I very well know, Mr. Chairman, that in many localities in this State the democratic party is largely in the majority, and in other localities the republican party is also largely in the majority. We know very well that certain individuals in these localities control these caucuses. They are your noisy, boisterous, bar-room politicians that control the nominations made at these caucuses; and we know that in some of these localities a nomination is an election, and if I am correctly informed, there are in certain localities in this State persons who take it upon themselves to say to the friends of certain candidates, "if your friend wants to be nominated—the nomination being an election—give us one thousand dollars, give us two thousand dollars, give us three thousand dollars, or some other sum, and we will secure his nomination." And to the friends of other candidates for nomination they will say the same, and they will finally get up a strife and a bid, and I have been informed (I won't say I have been correctly informed) that even the office of a judge has been tendered to men if they or their friends would secure to those men who control these nominations four thousand dollars, and that the friends of others have stepped in and said "We will give you five thousand dollars," and they have thereby secured their nomination and their election. The reason why I am in favor of both propositions is this, that by the proposition of the gentleman from Schenectady [Mr. Landon] we cannot reach this evil, but if we make it the imperative duty of the Legislature also to provide those laws which shall carry out this object and all necessary laws to prevent bribery and corruption, we may possibly reach this evil and the others. I am, therefore, in favor of both propositions, but if I can have but one, I am rather inclined to prefer the proposition of the gentleman from Erie [Mr. Masten], for, if we obtain this provision only, it will not be sufficiently stringent, and will not meet all these evils.

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for their votes, when they come into the Legislature, or for the performance of their official duty when they fill any other office; if that be so, the business of filling such offices will become so much the more profitable.

Mr. M. L. TOWNSEND—I ask for a division of the question between striking out and inserting.

Mr. FOLGER—I rise to a point of order, that by the rules adopted by this body, it is not permissible.

Mr. MASTEN—I do not rise for debate, for I know that it is out of order, although I have very little parliamentary knowledge, but I suppose that it is still in my power to modify my amendment.

The CHAIRMAN—The Chair is of the opinion that it is.

Mr. MASTEN—I desire to do so, so as to make it as agreeable as possible to the committee. I, therefore, instead of striking out the whole of this section, will move to strike out all of the section excepting that portion which was inserted by the amendment of the gentleman from Schenectady [Mr. Landon], and then to add mine at the end of the section.

Mr. HATCH—I want to inquire of the gentleman [Mr. Masten] how that will then read?

The SECRETARY proceeded to read the clause as proposed to be amended, as follows:

No person who shall receive, expect to receive, pay, or offer or promise to pay, contribute, or offer or promise to contribute to another to be paid or used, any money, or other valuable thing, as a compensation or reward for a vote to be given at an election, shall vote at such election; and upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm, before such inspectors, that he has not received, does not expect to receive, has not paid, nor offered or promised to pay, contributed, nor offered or promised to contribute to others, to be paid or used, any money or other valuable thing, as a compensation or reward for a vote, to be given at such election. Laws may be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or of any infamous crime; laws may also be passed for punishing and depriving of the right of suffrage persons who shall pay or contribute, or agree to pay or contribute, or who shall receive or agree to receive any money, property or valuable thing to promote the election of any particular candidate or ticket, or who shall make or be interested in any bet or wager dependent upon the result of any election.

Mr. LAPHAM—Will the gentleman from Erie [Mr. Masten] allow me to make a further modification to the proposition? I desire to call the attention of the gentleman and of the committee to the language of the provision of the Revised Statutes, and the exceptions contained in the sweeping language of the statute which is analogous to the amendment of the gentleman from Erie [Mr. Masten]. It excepts from the operation of the act, the defraying of the expenses of printing and the circulation of handbills and other papers previous to any such election, and of conveying

sick and poor or infirm electors to polls. The proposition of the gentleman from Erie [Mr. Masten] is broad enough to include all that class of cases, and for that reason I must vote against it unless it is modified.

Mr. HATCH—I understand it would be in the power of the Legislature under this authority conferred upon them, to make these modifications and such others as they saw fit.

Mr. LAPHAM—Not so, for the reason that the language of this provision is a constitutional direction, and is broad and comprehensive as I have suggested.

Mr. CHESEBRO—If this is to be passed, I would like to have it corrected somewhat in its phraseology. I would therefore move to strike out from the amendment proposed by the gentleman from Erie the words "or ticket."

The CHAIRMAN—The Chair would inform the gentleman [Mr. Chesebro] that his motion is not in order.

Mr. VERPLANCK—I should like to ask the gentleman from Erie [Mr. Masten], if the substitution of the words "or any remuneration" in place of "valuable things," would not cover his views in connection with it?

Mr. BELL—I am of the opinion that there is sufficient in these two propositions to cover the entire ground in the Committee of the Whole. The Committee of the Whole is not a very convenient place to weigh every word that should be incorporated in the fundamental law, but if it is ascertained that a proposed clause expresses the sense of the committee—that we have put in some simple, plain language, a provision that shall prevent fraud, leaving to the Legislature to pass laws sufficiently complete in detail to carry out the provision based upon it—an article can be drawn to become a part of the organic law. My advice would be to pass upon this, crude as it is now, and let it be then referred to some committee to put in shape, or some individual can take it up and put it in its proper shape before it is finally passed. I think the better way to dispose of this would be to adopt it in the Committee of the Whole, and afterward make such correction in the verbiage as may be necessary.

The question was put on the amendment of Mr. Masten, and it was declared carried, on a division, by a vote of 68 to 40.

Mr. CHAMPLAIN—I offer the following amendment:

Strike out section three, and insert instead thereof—

"SEC. 3. Laws shall be made for ascertaining at the time the citizen offers his vote at the election, the citizen who shall be entitled to the right of suffrage hereby established."

Mr. FOLGER—I rise to a point of order. Have we reached section 3 yet?

The CHAIRMAN—The Chair is of the opinion that we have not yet reached section 3. The Chair is of the opinion that all amendments are in order, and that this is an amendment to an amendment proposed.

Mr. CHAMPLAIN—If the section to which this amendment is applied is referred to, it will be found that it proposed to strike out that part of the section which authorizes the Legislature

to pass the registry law and amend the remaining portion of the section by confining the power of the Legislature to make all requisite proof at the time the elector offers his vote on the day of the election.

Mr. FOLGER—I rise to a point of order. It was decided in the beginning that this article should be read through in gross, and that then we should take up each section of it. Section 1 of the report of the committee is under consideration. The amendment of the gentleman from Cayuga [Mr. C. C. Dwight], accepted by me, substitutes two sections for section 1, being sections 1 and 2. I understand the amendment of the gentleman from Allegany [Mr. Champlain], to refer to section 3 or section 2 of the original article reported by the standing committee, so that I do not think it is now in order till we have completed section 1 of the report of the standing committee.

Mr. CHAMPLAIN—Mr. Chairman—

Mr. VEEDER—I rise to a point of order. Not that I wish to throw any embarrassment at all in the way of the gentleman from Allegany [Mr. Champlain], but this morning I inquired of the Chair whether an amendment to section 3 was then in order, and the Chair declared it was not in order as we were then considering section 1, and that no amendment to section 3 would be entertained until section 3 was reached in its order; the same state of facts exists now in the Committee of the Whole, as existed then. As I understand the business before the committee, I think after the motion made by the gentleman from Ontario [Mr. Folger] that we should proceed to consider the report of the committee by sections, that the only way in which this can now be reached is by reconsidering that resolution of the committee and moving to consider the report as a whole. Then amendments generally would be in order; but as it stands now, I submit, and as the Chair has stated, those amendments only are in order which simply pertain to the order of business before the committee, to wit, the first section of the report of the Committee on the Right of Suffrage.

Mr. KERNAN—I rise to a point of order. The point of order is this, that the Chair has ruled that the amendment of the gentleman from Allegany [Mr. Champlain] is in order, and there has been no appeal.

The CHAIRMAN—The Chair will state in a few brief words the situation of this matter. The gentleman from Allegany [Mr. Champlain] upon the incoming of the report of the committee last evening, as he had a right to do, moved that the report of the committee be sent back to the original committee with instructions to make the amendment now proposed by him in his place. For the purpose of facilitating the business of the committee, and at the suggestion of gentlemen of high position in the Convention, he reluctantly agreed to withdraw that proposition in order to enable him to speak for twenty minutes. And it was understood that he should have an opportunity to speak before half-past 7 o'clock this evening, and under these circumstances the Chair permits the gentleman from Allegany [Mr. Champlain] to speak.

Mr. FOLGER—If that was the understanding, I withdraw my point of order. As a matter of courtesy I have no objection.

Mr. CHAMPLAIN—I would have this provision of the Constitution declare the right of suffrage, so plain, simple and perspicuous, that the citizen when he reads it can see embodied there all the qualifications of an elector; I would leave no power beyond the mere regulation of the elections on election day in the Legislature; I would not authorize that body to impose any conditions or restrictions upon the exercise of this right, after it is prescribed in the organic law. It is a right that ought not to rest in part in the Constitution, and in part in laws to be passed by legislative authority; I would not send the citizen to grope through session laws and their amendments to find out the steps necessary to the enjoyment of the elective franchise, but I would have him take in his hand the Constitution prescribing his qualifications and armed with that, find the avenues that lead to the ballot box, free and unobstructed, and not blocked up by legislative enactments.

This report upon this subject declares:

"Your committee would urge that this precious right, so fundamental to all others, be carefully shielded from corruption, and that the main safeguards against its abuse should not be left to unstable and fluctuating statutes, but should be firmly imbedded in the Constitution."

It is surprising that after using such language the committee, in the same report, should not only permit the Legislature to exercise this extraordinary power over "this precious right," but that they should make their command imperative that it should be so exercised. It is more surprising still that this language should be used to justify the very thing that the spirit of the language so strongly deprecates. We have a right to consider the propriety of this section in view of the registry law we now have, modified only to uniformity, although the kind of law is not specified. We know what partisan legislation has done, and in obedience to this command it may do much worse. It is fair to assume it will not be better, and in view of existing enactments we know substantially what is intended. One very obnoxious feature is firmly imbedded in this section—that every elector not registered six days before election loses absolutely his vote. We have a right to assume that the Legislature, quickened by this imperative command, can construct just such provisions as partisan excitement and prejudice may dictate, and as are usually contained in "unstable and fluctuating statutes." It was twelve years after the existing Constitution took effect before the registry law was passed. It has been twice or three times amended. It was passed under a provision of the Constitution which declared that "laws shall be made for ascertaining by proper proof the citizens who shall be entitled to the right of suffrage hereby established." This provision is contained in the section reported, and my amendment, as before stated, confines its effect to the time when the elector offers his vote on election day. The section, as incorporated in the existing Constitution, many of the ablest men in the State have supposed only contemplated laws regulating the

election on election day, and as not authorizing any previous steps, as required by the registry law. This view is strengthened by the fact that the Legislature of 1847, at the extra session, called to make the laws necessary to put the new Constitution into full operation, confined their action on the subject to the enacting of laws for regulating the election on election day, thereby assuming that only such legislation was authorized. There is a strong belief pervading the public mind that when this power was asserted and used, it was so used for partisan purposes: that this registry law was a mere contrivance intended to strike down the conservative majorities in the cities. I would not leave a power in the legislature whose use would be open to such imputation or engender such prejudices. I would place the right of suffrage where the storms of party passion and party prejudice, if they beat upon it, would beat upon it in vain. They could not subvert it, for it would be firmly "imbedded in the Constitution." I believe a registry law to impose a useless and onerous burden upon the voters. The present law is oppressive upon the laboring and industrial classes, and is unpopular and odious with the people. The main reason for it, in the report, is that it prevents fraud. If it did it would be unjust to impose such a burden upon all to prevent fraud in a few. It is believed to promote fraud under the lull in the public mind and the feeling of security it engenders, it is believed the door is opened wide for the most glaring frauds upon the elective franchise. The minority report well says: The "pipe laying" conspiracies against the purity of elections in our large cities were perpetrated under registry laws. I have looked through the documents laid upon our desks to ascertain the expense of an annual election. I have not been able to obtain the information, but certain it is that it must double or treble that expense, for with the published instructions and blanks issued, and the services of the same board of officers who preside at elections, the same length of time, the expense to be paid by the tax payers, must be doubled if the board set one day, and trebled if they serve three. The existing law gives, in all respects, the same compensation as at elections, and authorizes three or four days services, besides blanks, books and instructions, thereby trebling at least the expense of the annual election. This is visited upon the tax payers generally. Again, it imposes an onerous and unnecessary condition and burden upon the elector; a burden, sir, that falls with a heavy hand upon the poor laborer and mechanic, to whom the loss of one or two days' wages is a loss they heavily feel. The man of wealth and leisure can take his gold headed cane and walk to the place of registry, or roll in his cushioned carriage on one or more days, if necessary, and not feel it as a burden. Indeed, his very prominence as a citizen places him on. But go the field of the husbandman or to the workshop of the mechanic, whose very obscurity keeps him off, and demand that he shall lose one or two days of his valuable time, and you take by means of this exaction the bread out of the mouths of his children. This burden falls with a crushing weight upon the laboring poor, with

whom the loss of a day's labor deranges their calculations, and pinches them with actual want. Sir, a law that should impose a tax of two dollars upon each elector, as a condition of his right to vote, would be met with the scorn of the public. How does this differ in effect from such an imposition? You punish men for operating upon the mind and perverting the honest will of the voter by bribes or menace. By the restrictions and burdens of such a law, as is contemplated, you operate in many cases upon the mind of the poor voter and keep him from the polls. The government will do what it denounces as criminal in others. It will throw a counter motive into the mind of the elector which will induce him to withhold his vote rather than to be to the trouble to obtain it. The great and inestimable right of suffrage is so lumbered up with restrictions that it is not worth having. Under the best devised registry laws many must lose their votes by accidental inability to comply with its provisions. Here is an unalterable constitutional requirement disfranchising all who by any accident are prevented from registering six days before the election. The report of the learned chairman, [Mr. Greeley] justifies this provision upon the same grounds that recording of deeds is provided for. He says, "To maintain that registration while it does afford protection to the titles whereby we hold our lands will give none to our right of suffrage is to defy reason and insult our common sense." Sir, I fail to see the slightest analogy between the two provisions. The recording acts are founded on principles highly beneficial and remedial to the owners of titles. They are not imposed as burdens. They are intended to protect the individual from fraud and to place the deed in a safe depository for his benefit, and place the evidence of title upon an imperishable record. They are not compulsory; but the citizen may avail himself of them or not as he elects. Suppose you had a provision of your Constitution reported here *that as a condition to the right to hold property* the citizen should be compelled to go annually to the county clerk's office and register his name. Would not such a law be regarded as an unjust and odious restriction upon the great fundamental right to hold property? And here lies the distinction. That a registry law for an election must impose the great burden of personal attendance upon the elector, and the taking of all the oaths, if challenged, which may be required on election day. The elector must first attend and offer his name, and the same process is required to get that entered as is necessary to get in his vote. He must attend until he is able to accomplish it, if it take one, two or three days, and when he offers his vote the same oaths are necessary. If you have a registry law at all, for I presume no one would contend it would be safe to intrust this power entirely to the officers, it operates as a restriction upon a right, and involves a loss of valuable time. Is it wise to impose it upon all because you fear a fraud in a few? It is useless, because upon challenge when the vote is offered all the oaths must be taken, notwithstanding the registry. I insist that for the mere purpose of preventing imagined wrong in one, the hand of indiscriminate vengeance



should not lump together all the innocent and the guilty by such an imposition. Our census laws, State and national assessment laws, State and national laws for the registry of births, deaths and marriages, are all framed upon the principle I am advocating, and in opposition to the spirit of the provision under consideration. The wisdom of the law makers has placed the decade of the census ten years apart, and have so carefully arranged it that it involves no burden upon the people; officers go about and take the census, involving the loss of only a few moments time to the citizen to answer questions and so of your assessment laws, State and national, officers go about and carefully collect the information. A law that should require every person once a year, to go somewhere and register his name for the purpose of taxation, would not be sustained by the people. It would be an onerous tax in and of itself, imposed in advance of the general tax on property, contemplated. I perceive by the notes accompanying the copy of the Constitution prepared under the supervision of a committee of this body, that out of the thirty-seven States of this Union, but four or five are stated to have an election registry law, and that among them are Maryland, Virginia, Louisiana and South Carolina, States whose systems of civil government heretofore I had supposed would not meet with so ardent an admiration from the learned chairman [Mr. Greeley], as his report in this respect evinces—having adopted them in this respect, as models. The report states:

"Your committee are confident that the experience of our State, and of the *civilized world* fully justifies these requirements. According to my limited reading of history I cannot concur with this statement unless, indeed, the learned chairman referred to the southern States I have named, as that part of the civilized world, whose experience fully justifies these requirements."

In this country we once had a registry law directed against foreigners, requiring them upon landing to repair to the nearest court of record, and register their name and age. It was found oppressive and burdensome in its operation and tended to discourage emigration, and it being the spirit of our institutions to promote emigration, this law was, in 1816 I believe, repealed. In the early history of England there was an act of parliament enacted for a similar purpose. It was the spirit of the government of that country to prevent emigration, and while under the law of nations it did not absolutely exclude, yet it applied a stringent law to the border lines over which there was a facility for emigration, and its effect was to obstruct and prevent it. Sir, these registration laws have figured in the history of the civilized world; upon the darkest pages of the history of religious persecution Christians have been compelled to "register" and take out passports, at a high and extraordinary tax, for the mere privilege of passing from one town to another. The learned chairman [Mr. Greeley] when he penned this report, must have forgotten a registration law that, with the consequences associated with its enactment and execution, marks the brightest and one of the darkest epochs in sacred history. That history tells us that

when one Augustus Caesar was Emperor of Rome, at a period when she had attained to imperial power, when the flags of many nations were waving upon her walls, he had annexed the land of Judea to his dominions, and that near the close of Herod's reign as governor of those provinces, he gave cause of offense to his imperial master. That in order to humble Herod and his people, and the more completely to subject them to his dominion, he issued a decree commanding all the people of Judea to repair to the chief city of their tribe and "register." History further tells that it was in obedience to this harsh and humiliating decree that Joseph with Mary journeyed to Bethlehem, the city of his tribe. That because of the crowd of people who had congregated there in obedience to the same oppressive decree, the inns were crowded and he was obliged to seek lodgings in a stable; and there, while shepherds watched their flocks by night upon the plains of Judea, that event occurred that changed the eternal destiny of lost man, and raised in the sky a bow of promise for the redemption of a ruined world. An ambassador was sent to Augustus by Herod to plead for his people, and the execution of the unjust decree was suspended. History tells us that ten years later, under the reign of Cyrenus, his successor, the odious decree was enforced, and the people broke out in open rebellion against it. And under the lead of one Judas of Galilee, the people were organized in forcible resistance to Romish authority. Might triumphed over right at first, but the war was waged with varied success for many years, until finally Jerusalem was demolished—razed from the face of the earth as a measure of imperial vengeance upon the insurgents. Long before this, tyrannical rulers in Israel had ordered a numbering of the people, and history tells us that a long persecuted class of Christians and unhappy people were driven out among idolators and strangers, and hung their harps upon the willows and sat down by the river of Babylon and mourned over the lost Jerusalem, and wept; and vowed that the gentle notes of their harps should never mingle again with the voice of the despoiler. Sir, this coerced registration has been imposed in the history of the civilized world by the mild forms of civil authority and the harsher forms of military power—by the conqueror upon the conquered. It has generally been imposed as a burden, often as a restriction upon the exercise of some right, and sometimes as a measure of deep humiliation, and it has always been odious. Sir, I would not have a "registry" system in the Constitution. A registration is going on now in one-third of the States of this Union, enforced in the rigorous and anti-American form of arbitrary and despotic military power, under a law which, at one fell swoop, has swept away the liberties of twelve millions of people. It is expelling large numbers of persons from the exercise of the right of suffrage who have heretofore enjoyed it under laws of their own framing, and is forcing large numbers of ignorant and degraded persons into the body politic—contrary to the traditional customs and habits of the people; repugnant to their polity, convenience and prejudice. I believe a day will come when all this will be changed, when these arbitrary acts of



Congress so repugnant to the Constitution, by which the courts, the laws, and all the safeguards of personal liberty and private right of the people in ten States of this Union are destroyed, will awaken the deepest indignation of the American people.

Time is dispelling the passions that fratricidal war has engendered; a day will come as fast as its lightning flight can bring it, when public affairs will be viewed by a purer philosophy, and controlled by a nobler and more exalted statesmanship; when that day shall come; when the country shall emerge from the political gloom in which it is now enshrouded, when the bleeding, dissevered and estranged fragments shall be gathered together under a restored Union and re-established Constitution—a Union restored in that spirit of public concord and brotherhood which animated our fathers from the first gun of the revolution and which sent a united and prosperous country along the pathway of national advancement. I believe that all these measures will become offensive and hateful to the American people. I believe that day is coming, because it was the great inspiration of the people in carrying on this war. It was the proclamation of the national government. The faith of the nation was plighted that the Union should be restored in that spirit. It was sounded in every bugle charge. It was thundered from the mouths of your cannon, and it was a part of that registered oath which is inscribed above your head (pointing to the words inscribed upon the wall above the president's head, "I have the most solemn oath registered in heaven, to preserve, protect and defend the government."—Lincoln,) and while the soul that took upon itself that oath, was under its solemn sanction, other words were uttered and were registered also with that oath, to which I will invite the attention of the committee, in the inaugural address of Mr. Lincoln:

"We are not enemies but friends. We must not be enemies. Though passion may have strained, it must not break our bonds of affection. The mystic cords of memory, stretching from every battle-field and patriot grave to every living heart and hearthstone all over this broad land, will yet swell the chorus of the Union, when again touched; as surely they will be, by the better angels of our nature."

That chorus is already rising. Its voice has been heard in Connecticut; it has been loudly echoed from that State beneath whose soil repose the ashes of Henry Clay. Its murmurings are heard on the distant shores of the Pacific. It will leap the Rocky Mountains and will sweep the prairies of the West; it will gather momentum and power in the Central States, and only break upon the granite hills of New England, as

"From peak to peak the rattling crags among  
Leaps the live thunder, Not from one lone cloud,  
But every mountain now hath found a tongue,  
And Jura answers through her misty shroud,  
Back to the joyous Alps that call to her aloud."

When that day shall come, this reflux wave of public sentiment, rising to one overwhelming and mighty ground swell for *the Union and the Constitution*, will sweep away these enactments, and render the very name of registration hateful to the American people.

Mr. GREELEY—I shall say but very few words as to this provision with regard to a registry of voters. The gentleman from Allegany [Mr. Champlain] well said that the times are not propitious for the success of such measures as he judges expedient, especially this one. I postpone, then, to the time when it shall be necessary, the argument that might be made in favor of a registry law. I will only say this on that point: that all the New England States have about the same as registry laws. Every one, so far as I know, has its check-list, which is made up some days before each election, and no man can vote whose name is not on the check-list. Some States, as Massachusetts, require and impose a poll-tax, to be paid some time before election. Pennsylvania also imposes a poll-tax, which amounts to a registry. A good many of the States have some sort of a property qualification, which answers to a registry. There are few States wherein universal suffrage prevails which have no other safeguard against fraudulent voting than the word of the voter, and these grow fewer every year. A State which accords the right of suffrage to whomsoever shall choose to claim it, I think, never has endured in the whole history of the civilized world. What we ask is, that the right of each man entitled to vote shall be established calmly, deliberately, dispassionately, judicially, at some time apart from the heat and struggle of an election. When the gentleman says that each year the voter must appear before the registers and put his name on the registry, the answer is that the fact is otherwise, except in certain great cities where every man lives within five minutes' walk of the polls. It has never been required that a voter in the rural districts should put his name on the registry, and repeat that process from year to year. The registers, when they make up the list, come to the name of John Jones: "Does anybody know him?" "Yes; he lives down by Sykes's mill;" and John Jones' name is kept on the list until he moves away or dies; then it is erased. There is no such thing as calling the husbandman away from his farm to be registered annually, since re-registration has been required. I should be perfectly willing to strike out the words, "And the Legislature shall provide that" as I consider them superfluous; but to assent to the gentleman's proposition is to agree that we shall have no registry at all. Of that enormous mass of population in New York city and Brooklyn, not one voter in ten is known at the polls. I voted in New York nearly or quite twenty years, and I did not pretend to know one man in ten whom I met at the polls of my district, and could not tell whether they did or did not live in that district, nor where they lived. The practical effect was, that almost any man came up and voted who claimed the right. Mr. Horace F. Clark told me that when he ran for Congress in 1856, as a democratic candidate, he had votes in the Twelfth ward (Harlem), in the upper part of the city, accompanied by tickets for charter officers in the First ward, and that he was satisfied that the voters had commenced at the Battery and voted right along up to High Bridge. [Laughter]. It is notorious among managing politicians in the city that there is on election day voting over and over

and over again, by men called "repeaters"—men who are trained to vote at as many polls as they can. It is an established institution, and not entirely abolished by the registry, any more than the forgery of a man's title is always stopped by the registration of deeds. But it is an enormous check on the facility for voting unlawfully, and I have no doubt that the registry law diminishes illegal voting in the city of New York at least seven-eighths.

Mr. HITCHMAN—How does the gentleman provide that persons who have attained their majority within six days before the election, shall vote? They will have no opportunity to register.

Mr. GREELEY—Any registering board will put on the list every man who will be entitled to vote on the day of the election at hand. For instance, a man states to the registrars that he has only been naturalized five days; but they know that the date of his naturalization is ten days prior to the pending election, and that he will then have a right to vote; and no inspector would refuse to register; and in case of a young man who shall appear before the inspectors and swear that he will be twenty-one years of age before the election, no officer that I ever heard of, would refuse to put his name on the list.

Mr. BICKFORD—He is obliged to.

Mr. GREELEY—Allow me now a few words in regard to other objections to the Committee's report. Two weeks have passed, during which time I have sat silent and heard nearly a hundred speeches against it. Our proposition is the simplest, clearest and most explicit, that was ever submitted as the basis of suffrage in this State. The suffrage article in our present Constitution prescribes four different terms or periods of time: One year in the State; four months in the county; thirty days in the district; and ten days a citizen. We propose to sweep away these four terms and replace them by two: viz.: One year's residence in the State, and thirty days' citizenship and residence in the election district where he offers his vote. These are the only two conditions as to residence, and every one can understand them. Under the present plan, if a man comes to vote, we ask him "How long have you lived here?" "Two days," "You can't vote." "Yes, I can vote for Senator, because I have lived four months in the senate district, and I can vote for Governor, and for Congressman, though not for Assemblyman." How do the inspectors know for what officers he will vote? What right have they to look inside of his ballots to see what candidates are in them? Sir, the plan is all wrong. It is opening the way to fraud to have any such condition of suffrage, and therefore we ought to abolish it. We ought to have a simpler system. The gentleman from New York—

Mr. VEEDER—Will the gentleman [Mr. Greeley] allow me to ask him a question?

Mr. GREELEY—As I have only twenty minutes, I prefer not to be interrupted. The gentleman from New York on my left [Mr. Gross] says that, if you exact a thirty days' naturalization before voting, all the adopted citizens will vote against our Constitution. I hope not. They did not vote against the Constitution of 1846, which

originated a clause requiring a ten days' naturalization, and that involved exactly the same principle; and it cut off some men from the right to vote at the next election who would otherwise have been entitled to vote under the previous Constitution. The Convention of 1846, I think, did right in striking at the enormous abuses which existed under the previous rule in this respect. I have seen a mayor of New York elected by voters manufactured on the third day of an excited three-day's election. I know there were enormous frauds in naturalization. Men swore others through, when they would not have done it, except under the stimulus of an election. Their passions were excited, so that they swore wildly; and we propose to relieve others from their temptation. I desire that the naturalization shall be completed calmly and deliberately, like the registration, thirty days before the election, so that there shall be ample time to learn whether there has been any fraud in such naturalization. I do hope that adopted citizens will not take offense at this, as it is not intended to be an encroachment on their rights, any more than the ten-day clause in the Constitution of 1846 was intended to be. I am very sure there are not nearly so many frauds in naturalization as there were when naturalization was continued, and voting thereon, up to the day of the election, and on that day. I believe if you make it thirty days, there will be nothing like the frauds committed that now are. I protest against the practice which now prevails of drag-netting the whole community to find out persons who can be pulled into the naturalization office and run through the mill in order to get their votes at the election. I would like to have every person who comes here to live become a citizen of the country; but let it be by his own voluntary act; let it not be, as it is now, by the work of a press-gang, looking into all the cellars and garrets and holes in New York, dragging out all who can be ground through the naturalization mill, and thus swell the vote of the party. It was so last fall; it is so very often; but, if the time is made thirty days, it will enormously diminish abuses in naturalization, while, at the same time, you will preserve unimpaired the right to be naturalized. And now, Mr. Chairman, as to paupers. The gentleman who preceded me [Mr. Champlain] said there were 250,000 paupers in our State, of whom the men would be disfranchised by this bill. But, sir, the records of the city of New York show that, on the 6th of October last, just after the great war, and when there was an enormous drift of population to our cities, there were just five hundred and four men in the poor-house of that city—not citizens, but all sorts—foreigners, Asiatics—people gathered from the highways and byways and from all the seas that wash the earth—five hundred and four men. There were beside eight hundred and eleven families termed out-door poor; but I am assured that most of them were the families of widows, not to say of aliens. I verily believe that there were not five hundred persons in that great city of New York who were male citizens of the age of twenty-one years and upwards who accepted relief from the public during the month of October; and

these are all that are excluded as paupers by our report; and, if there are not more than five hundred there, there cannot be more than five thousand in the State; indeed, I do not believe there are *three* thousand.

We all know how their names are multiplied. A man appears in a town in the dead of winter, and goes to the overseer of the poor, and says that he wants help to get to the next town, where he has friends who will help him. "How much do you want?" "I want a dollar." The overseer hands him a dollar, and with it the man goes to the next town, where he tells the same story to the overseer there; and so he goes from town to town, until in a few months that man figures in our returns as a hundred paupers. [Laughter.] I have seen it—you have seen it. These men are kept moving all winter. They go from town to town, and the result is that they figure up from two to three hundred thousand paupers, when there are not more than five thousand in the State—I mean men. What we mean by this provision is to limit the enormous and inordinate power which is given to a few officers who have charge of relieving the poor, to expend public money to serve the ends of this or that party. I am assured that the relief of the poor in the city of Albany is worth two or three hundred votes to the dominant party; I am assured that in Troy it is worth three hundred votes; and I say that this dispensing of public alms is a source of political corruption. I know that the officers of the almshouse in New York have sent word that they have not allowed persons to go out to vote. I presume that is so; nevertheless, men do leave the almshouse in order to get registered, and they do vote. You cannot stop them without such a provision as we have reported. A pauper comes to his keeper and says, "I have been here long enough, and I want to leave." How can you detain him? He leaves, urged by the promptings of a political committee, who take him, fill him with liquor, get his vote, and then shove him off; and in a week he is again back in the almshouse. If paupers are entitled to vote, they *will* vote, and there is no power to stop them. Your overseers of the poor, your keepers of almshouses, your relief officers, will be vote-gatherers for their party, and it is but natural that they should be. I would be. I would not do anything wrong; but I would try to keep the paupers well supplied with documents on our side, and I would not be in any great hurry to give them anything on the other side. [Laughter.] The paupers of our State are not independent voters. They do not vote their own views, but those of their keepers. They do not supply a substantial contribution to the public sentiment of the State of New York. The gentleman from Kings [Mr. Barnard] the other day raised an objection to our proposed disfranchisement of idiots. He argued that blockheads are idiots—hence this exclusion will work enormous disfranchisement. [Laughter.] Mr. Chairman, if the gentleman will consult Webster's quarto dictionary, he will find this dictum, quoted from the British Encyclopedia, I believe: "A person who has understanding enough to measure a yard of cloth,

number twenty correctly, and can tell the day of the week, etc., is not an idiot, under the law." I beg that gentleman [Mr. Barnard], therefore, to calm his apprehensions—he will *not* be disfranchised by this exclusion. [Laughter.] It was said by a gentleman from my own county [Mr. Tappen] that the Committee on the Right of Suffrage had made undue haste in presenting their report. We certainly did try to present our report so soon as we reasonably could; but we did not make undue haste. At our first meeting, after consultation, we invited each member of the committee who chose to submit his draft of an article; and three members did so—I among the number. My draft was not accepted, and that which most closely followed the present was accepted as a basis, to be improved as we could find from the other drafts or the suggestions of other members who had not submitted drafts. We scrutinized very carefully, line by line, section by section and clause by clause, and it was gone over and over and over again; fifty or sixty votes were taken on the different propositions; and no attempt was made to report until every member of the committee had been fully heard, every suggestion noted, and every proposition acted on. We made as fair and clear an article as we could well do; and if we had been six months at it instead of two weeks, I do not believe we could have satisfied ourselves better than we did by the article as reported to the Convention. The gentleman from Rockland [Mr. Conger] with his chart, which was suspended on the wall, showed us that Blacks are not accustomed to go out of their proper latitude. I accept that statement. I believe that the Black element of our population will necessarily be smaller and smaller every year. They were one-fifth in the boyhood of our fathers, they are but one-eighth now; and the child is now born who will see them less than one twentieth—not because they cannot live here, but because before the overwhelming tide of foreign immigration which breaks on our shores at the rate of more than a thousand a day—mainly of the young, vigorous, and energetic people of Europe—the Blacks cannot but diminish in proportion to our whole population. But, with these facts before me, I hold just the opposite of the gentleman from Rockland [Mr. Conger]. Since our Black population is so small, and gradually becoming less important, it does seem to me that we are not justified in making any extraordinary, invidious rule in reference to them, as there can be no danger from so powerless an element in the population of this State—that we can afford to be just—nay, generous—because we cannot pretend to be afraid of Blacks. If it be true, as the gentleman showed on his map, that the Blacks never did seek a home in this latitude, but only came here as they were dragged away from Africa by white men, I have no doubt that, under the beneficent rule of freedom, they will gradually gravitate toward the tropics, where they belong. They will go there because it is their nature to go there; and they will become still fewer here in proportion to our whole population. Now, Mr. Chairman—



At this point in the remarks of the speaker the gavel fell, the twenty minutes having expired.

Mr. VEEDER — I ask if it is in order for me to offer an amendment to the amendment proposed by the gentleman from Allegany [Mr. Champlain].

The CHAIRMAN — The Chair does not regard the proposition of the gentleman in order.

The question was then put on the amendment of Mr. Champlain and it was declared lost.

Mr. VEEDER.—I do not like to proceed out of order, but I desire to propose an amendment to the third section.

The CHAIRMAN — It was under peculiar circumstances which led the Chair to permit the gentleman from Allegany [Mr. Champlain] to offer the amendment he did. The Chair feels that it cannot again deviate from the rule by admitting the gentleman from Kings [Mr. Veeder] to offer the amendment he suggests.

Mr. LAPHAM — I offer the following amendment:

The SECRETARY proceeded to read the amendment as follows:

Add at the end of section 2, the words following: "The payment of the expense of printing and circulating of papers and documents previous to any election, and of conveying sick and infirm electors to the polls is excepted from the operation of this section."

Mr. KERNAN — I think, sir, if the proviso, which has just been offered could, in good faith, be strictly enforced, it would probably be proper, but I submit to the Convention, and to the gentleman from Ontario [Mr. Lapham], that it will open the door for a large amount of fraud in the use of the money that is raised for elections. We all know when they come around to get money, that they always claim they desire to raise money to print and circulate documents and to enable them to get the poor, aged and infirm voters to the polls. Hence many men will be led to give money to those who say it is for such a purpose, when in truth it will not be, to any considerable amount, used for any such purpose. Gentlemen will find that the aged and the infirm can be got to the polls without paying for it. We need not fear but what there will be sufficient printing done and documents circulated without raising any money for it. Hence, I trust we will not adopt this proviso, for I fear if we do, it will, to a great extent, nullify the provisions of the proposed article. We all feel that one of the great dangers to our system of government, one of the evils undermining and endangering our popular institutions, is the use of money in carrying elections. I trust we will not adopt any proviso which will enable parties to evade the provision which has been agreed upon. Printing can be done and documents circulated, and the aged and infirm electors brought to the polls without raising money as is done in the name of paying for these services, and which is used for corrupt purposes.

Mr. LAPHAM — I have proposed this amendment, because I have found in the present statutes almost the precise words employed by me, as constituting an exception in the election law, which is an act similar in its purpose to what it is now proposed to engraft in the Constitution. I

am unwilling to enact a constitutional provision which will forever prevent any citizen from paying any money for the purpose of defraying the expense of printing or of circulating documents, or of conveying aged and infirm electors to the polls. According to the doctrine of the gentleman from Oneida [Mr. Kernan], every document which is hereafter to be printed, must be printed free of expense, and no money can be contributed to defray such expense, without coming within the inhibition of the section as it now reads; no money can be paid for defraying the expense of circulating intelligence among the people, and the result is that my friend from Oneida [Mr. Kernan] and the benighted men who clamor in the name of democracy and who support his ticket, who do not want any information of any description or kind will be satisfied. I want food for the intelligent people of this country, who read that they may understand what they are called upon to vote for, that they may vote intelligently upon all questions which may come before them hereafter. I do not wish to see any door opened to fraud or imposition. I repeat I have copied this from an act of the Legislature carefully framed, and of which, so far as I am advised, no complaint has been heard from the time of its passage to this day, and no abuses have grown up under it. If a person, under pretense of paying for documents, in truth and in fact pays for a vote, why, then, he is open to punishment under the Constitution as it will read with my amendment, because, if under the pretense of preserving the Constitution, an act inhibited by it is performed, it is just as much an offense as an open violation. And if, as has been suggested here, the thing is so nicely done in certain localities in the State, that it does not bear the name of bribery, it is no less bribery. If in the country, as is claimed, we do the thing so openly are we any more deserving of punishment and reprehension, than those electors, where the thing is sugared over with contrivances, to enable the perpetrators to escape the punishment to which under the law they are amenable. What I desire to secure is an opportunity for every liberal, well-disposed man, and every man who desires the circulation of intelligence among the people, to contribute of his means honestly for that purpose, and this amendment provides for nothing else.

Mr. KERNAN — I would like to make a single remark.

The CHAIRMAN — The Chair is of opinion leave cannot be granted to the gentleman.

Mr. KERNAN — Would it be in order to move to strike out a word.

The CHAIRMAN — The Chair is of opinion it cannot be done.

Mr. LANDON — The language of the section as it now stands, is "that no person shall contribute any money or valuable thing as a compensation or reward for a vote." That language is different from the Revised Statutes. I desire to call attention of the committee to the fact, that as I understand the condition of this amendment, it re-enacts the same thing. In the second section of the amendment of Mr. C. C. Dwight there is substantially the same provision that has been



adopted in the proposition of the gentleman from Erie [Mr. Masten].

Mr. WEEED—One word in reference to the amendment of the gentleman from Ontario [Mr. Lapham]. We are attempting by Constitutional provision to prevent frauds in elections, that gentlemen upon the floor say are now an every day occurrence, and yet the gentleman from Ontario [Mr. Lapham] says he has heard no complaint under that statute, at the same time every word that has been uttered here has been a complaint under that statute; a complaint that the statute does not reach the trouble, and that there needs to be some other remedy. Now he proposes to amend the proposition before the Convention, with the words of the Revised Statutes. The first part of his amendment, that part of which refers to circulating documents and printing I would gladly vote for, but under the last part, every gentleman familiar with elections throughout the State knows that three-fourths of the money corruptly used at elections in this State is paid. I cannot give my vote to incorporate into the Constitution those words. It is a clause allowing people to pay money to get aged and infirm voters to the polls. Without any great amount of trouble, every man in the State can get to the polls, certainly he can in the country, by private conveyances; any infirm and poor man will get to the polls in that way; but if you put a clause in the Constitution authorizing the payment of money for that purpose, every man who wishes to sell his vote, if there are persons who wish to purchase, will agree for so much money to a man to bring his poor neighbors to the polls, which is purchasing a vote and nothing else. For that reason I am opposed to the latter part of the amendment, and I wish to ask if there cannot be a division, so that the first part may be adopted and the last rejected.

The CHAIRMAN—The Chair is of the opinion there cannot be a division.

Mr. VAN CAMPEN—I think the necessities which call for that provision for bridging in poor and infirm voters to the polls is so slight, that I cannot readily see the way in which that could be used for the purpose of corrupting the purity of the elective system. I trust the gentleman from Ontario [Mr. Lapham] will himself consent to the striking out of that clause. As far as the circulation of documents among the people is concerned there can be no question upon that, there is no liability of that being abused, I am sure of that, speaking of my own neighborhood. The necessity for bringing out these old and infirm voters is so very slight, that I see no reason for putting this provision in the Constitution and I therefore beg the gentleman from Ontario [Mr. Lapham] to consent to a modification of that part of the amendment.

Mr. LAPHAM—I have no objection to striking out the last sentence.

Mr. COMSTOCK—Is it not now a new proposition?

The CHAIRMAN—The Chair thinks not.

Mr. E. A. BROWN—I simply rise to ask the gentleman who proposed that amendment, to point out what there is in the article which requires any such exception.

The question was then put on the amendment offered by Mr. Lapham and it was declared carried, on a division, by a vote of 55 to 51.

Mr. CONGER—Do I understand it is now in order to move an amendment by way of substitute?

The CHAIRMAN—The Chair is of the opinion it is not now in order to offer an amendment by way of substitute.

Mr. CONGER—Is it in order by way of amendment?

The CHAIRMAN—By way of amendment it can be offered.

Mr. CONGER—Then I desire to offer the following amendment, which I have referred to when I last addressed the committee, to wit, the same that was proposed in the Legislature of 1853.

The SECRETARY proceeded to read the amendment, as follows:

Laws shall be passed excluding from the right of suffrage all persons who have been or may be convicted of bribery, or other infamous crime, for depriving every person who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, or who shall pay, give or receive, or promise directly or indirectly, or agree to pay or give money or other property or valuable consideration with intent to influence any elector in giving his vote, or to deter any elector from voting, from the right to vote at such election, or from holding any office voted for at such election.

The CHAIRMAN—The Chair is of the opinion the proposition is a substitute and not an amendment, and can only be received by reconsidering the vote by which the former proposition was carried in the committee.

Mr. CONGER—Then I move to reconsider that vote with a view of enabling me to offer this—

Mr. RATHBUN—That motion cannot be considered to-day, I suppose—

The CHAIRMAN—The Chair is of the opinion it can be entertained, as it appertains strictly to the business before the committee.

Mr. CONGER—I will state that my object in offering this is based on the following reasons: In the first place, as I intimated before, I wish to include what has been omitted heretofore, the action of the party who seeks by money, or other valuable consideration, to deter or dissuade anybody from voting. I suppose there is no objection to that proposition. Then, again, we have here, under the form of a constitutional provision, really done the work of legislation; for my honorable friend from Ontario [Mr. Lapham] has been obliged to resort to the Revised Statutes to get the foundation for his amendment, but he could not well get the whole statute in. It is very unnecessary in making these constitutional amendments by which the Legislature are to pass certain laws, to go into all the particulars of the law which they shall enact. It is sufficient if we point out clearly to them the duty they ought to pursue. When you have the phrase "with intent to influence any elector in giving his vote or to deter or dissuade any elector from voting," I submit you have perfect power to command precisely what the Legislature of 1853 sought heretofore; to say what influences may be allowed and what influences

may be disallowed. The other advantage of the proposition I submit is this: That it is simpler in form, it embraces all the subjects on which the Legislature are to act; for you will find as in the report of the committee that they are also to pass laws depriving anybody who shall make any bet or wager, of the right of voting. As I have said I have an unusual advantage in presenting this proposition, because I know when it is carefully scrutinized it will meet the approbation of the majority of this committee, in preference to the other proposition, for where I use the phrase "promise or agree to give or receive directly or indirectly," I think it is a much better form, to cover the whole subject than that which is in the proposition of the amendment, "receive or expect to receive," because it must be out of an agreement directly or indirectly made that the base transaction grows of buying or selling votes. It covers both cases equally, of those who pay or offer to pay, and those who receive or offer to receive. This proposition, made by the Legislature of 1853, was canvassed with the greatest care, and there were more minds occupied upon it, and that took part in maturing it, of the legal profession, than might be supposed, on mere notice of the result of their deliberations. The proposition was introduced by the late Mr. Taber of Albany, who used all his ability in perfecting the language which should cover every possibility of fraud. Afterward it passed the Senate, and received all the votes of the gentlemen present in the Senate, with the exception of three. That is the reason, I think, that this proposition will be found better and more desirable by the gentleman than his own.

The question was then put on the motion of Mr. Conger, to reconsider, and it was declared lost.

Mr. FOLGER—I wish to offer an amendment which may perhaps be premature, but which will be necessary if the report of the Committee on the Organization of the Legislature, is adopted. It is to strike out that provision which requires a residence in the district from which the officer is to be elected, and also the provision requiring a four months' residence in the county. According to the report of the Committee on the Organization of the Legislature, that is the smallest district from which an officer is to be elected; and single assembly districts are by that to be abolished. I offer this amendment so as to make this article correspond with what appears to be the temper of the Convention in reference to that report.

The SECRETARY proceeded to read the amendment of Mr. Folger, as follows:

Strike out the words in section one of Mr. Dwight's amendment: "But such citizen shall have been for thirty days next preceding the election a resident of the district from which the officer is to be chosen for whom he offers his vote."

Mr. RATHBUN—I am opposed to that amendment for one reason, which I will state. If I understand the amendment, it removes entirely all necessity of a personal residence in the district for any time. Unless the district system is altered, persons may colonize a weak district from a strong one in one single day, so as to change a majority in the smaller district, and still leave the other to

be carried by the same majority. It opens the door for colonization, unless the report of the Committee on the Organization of the Legislature shall fix the location of districts by county lines. Unless that prevail, then we have the colonization system complete and perfect, from one district in the county to another, and in cities still worse.

Mr. BARNARD—I would suggest to the gentleman from Ontario [Mr. Folger] that there are other districts beside assembly districts, and although we may have the proposition of the Committee on the Organization of the Legislature, so as to have county lines represent the districts, yet when it comes to the cities—the city of Brooklyn for instance—we have an election for city officers, held on the same day as for State officers; we have an election for mayor in the city, who may be voted for, unless an amendment is made, by all the citizens of Kings County who may come in within a few days into the city of Brooklyn. Then we have aldermen to be elected, and we might have this colonization from one ward to another, unless the provision is left as it stood originally.

Mr. FULLER—I desire to offer an amendment as follows:

In section 1, line 2, after the word "citizen" insert the words, "of the United States."

As the amendment stands now, accepted by the gentleman from Ontario [Mr. Folger], these words are stricken out. The reason of the amendment, as stated at the time, was that a doubt had been raised as to whether a colored man was a citizen of the United States; and, if I understood it, it was in deference to this doubt that this amendment was made. The gentleman stated that it was held in the Dred Scott decision that a colored man was not a citizen of the United States, and also that Governor Marcy refused to give a passport to a colored man, upon the ground that he was not a citizen of the United States; and it was in deference to these decisions, as I understand it, that this amendment was moved to strike out the words "of the United States." I am not in favor of making any such concession—it is a virtual concession—in deference to those decisions, that a colored man is not a citizen of the United States; or in other words, it assumes that there may be a well founded doubt, as to whether a colored man is a citizen of the United States. I am unwilling to admit or concede, directly or indirectly that there is any such doubt. The Dred Scott decision never was an authority higher than an *obiter dictum*; such as it was it has already gone to the "tomb of the Capulets" never to be resuscitated; it is nothing to the credit of Governor Marcy, that he refused a passport to a colored man, on the ground that he was not a citizen of the United States; and if alive, he would not do it again. I am, Sir, in favor of extending the elective franchise to the colored man, but I am unwilling that while I extend it to him with one hand, I should be found taking back with the other a full recognition of his citizenship. I plant myself upon the ground that he is a citizen of the United States—there I propose to stand, and that ground I do not propose to yield. If you strike out these words for the reason

assigned, we shall have it alleged hereafter that this Convention has decided by its action that a colored man is not a full citizen of the United States, but only a sort of half citizen, such as was described by the gentleman from Rockland [Mr. Conger] the other evening. There is another reason why these words should be restored; the words "citizen of the United States" are well understood. This word "citizen" is a word of very large import; it is one which has not been judicially defined in the Constitution of this State, and if the amendment is left to stand, it may have to be judicially defined. The amendment of the gentleman from Onondaga [Mr. Andrews] accepted by the gentleman from Ontario [Mr. Folger] assumes that if we use the word "citizen" instead of "citizen of the United States," a colored man may vote, although not a full citizen of the United States. If that is so, then why may not another man vote who is not a full citizen of the United States. And where will this end? I think, sir, we had better preserve the language as it was in this respect, and I think the amendment is not called for. In the next place, the amendment of the gentleman from Onondaga [Mr. Andrews] is a concession I am unwilling to make, in deference to the authors of the Dred Scott decision or any other decision of that kind.

Mr. FOLGER — The gentleman founds his argument upon an error. The phrase "citizens of the United States" is not in the present Constitution, and this statement eliminates all there is in his position. Then, it seems to me, down falls his argument. If the gentleman will turn to the Constitution, he will see that the phrase "citizens of the United States" is not there at all, and never was, from 1777 down to the Constitution of 1821, and the Constitution of 1846, referring to the men of color, expressly speaks of them as "citizens of this State." And also it says: "And no man, unless he shall have been three years a citizen of this State." So the amendment of the gentleman from Onondaga [Mr. Andrews] was not introducing a new rule, but only restoring the words the fathers handed down to us, and by which I prefer to abide, rather than to launch upon the sea of uncertainty and require a judicial construction on any new phrase we may use. It is very bold and manly, without doubt, to despise the precedent of the Dred Scott decision, and the precedent fixed by Governor Marcy and the precedents fixed in the history of the country. It is very bold to say that there are no doubts; that we cast all doubts to the winds; that we are not to give way in our feeling for the negro and our desire to take care of him, to any such fanciful, unfounded doubt. But if there is a doubt, is it not the part of wise and prudent men to guard against it; and while pursuing the object we desire, to remove from our path all pitfalls into which we may perchance slide? That there is a doubt, the gentleman from Monroe [Mr. Fuller] cannot deny. There is an express decision upon the judicial records of the country, to the effect that the colored man is not a citizen of the United States. There is an express decision upon the records of the executive department of the United States, that the colored man *is not a citizen of the United States*. Then where

is the wisdom of running our heads full against this wall, however weak it may be, for although the wall may topple over, our scalps may chance to be abraded. I think we give up nothing when we adhere to the language of the Constitution of 1846, which had no such phrase as the gentleman from Monroe [Mr. Fuller] claims to restore, but which crept into the amendment of the gentleman from Cayuga [Mr. C. C. Dwight] because he perceived it was used so extensively in the report of the Standing Committee on the Right of Suffrage. If it be true—I do not say it is or is not—but it may by possibility be true, that the colored man is not a citizen of the United States. And then if we put that phrase into our Constitution and say that because he is a citizen of the United States, he shall be a voter here—while we have come together with that subject in our minds among others, and with the desire to give the colored citizens of this State the right to vote, we are using language which may defeat the exercise of that right. I say, it is the part of wisdom to eliminate all such doubts from our Constitution and plant ourselves on certainties, which we surely do plant ourselves upon when we adhere to the language which has been settled for twenty years.

The question was then put upon the amendment of Mr. Fuller, and it was declared to be lost.

Mr. VAN CAMPEN—I offer the following amendment to Mr. C. C. Dwight's amendment:

To strike out the word "four" and insert in lieu thereof "two," so that it shall read "two months' residence in the county" instead of "four months' residence in the county."

The object of moving this amendment is, that I desire not to throw any unnecessary obstacle in the way of those who have a clear State residence of one year. I cannot perceive that by retaining four months we gain anything, except a certain purpose to hinder what is termed immigration from one district to another. It seems to me that every facility ought to be afforded to the voters who have a clear State residence, and whose interests are clearly identified with the State. Therefore, I think all the purposes of preventing those frauds, which are sometimes perpetrated by moving from one section of the State to another, would be clearly provided for by two months' residence as well as four. I like generally the article as it reads, but I think this would be an improvement upon it.

Mr. KERNAN—I am in favor of that amendment. As I understand it, it reduces the county residence from four months to two months. I am in favor of it because I am opposed to anything of that nature. I do not see the function which a four months' residence in the county is to perform in this constitutional arrangement. The voter must have been in the State for a year, and it seems to be the settled purpose of the committee who reported this provision, that he must reside thirty days in the official district from which the officer is to be chosen for whom he offers his vote. Under this arrangement, I do not see any benefit of any such limitation of four months' residence in the county, as there must be a residence in the official district from which the officer is to be chosen.



Mr. FOLGER—The reason there is for this residence of four months, is undoubtedly to prevent colonization, which might be carried on in a residence of sixty days. Take the county of St. Lawrence for instance, with its seven thousand surplus votes, and it might control the election of many assemblymen in an election, upon the result of which election might depend who should be United States Senator. In a time of great excitement, or great desire to carry that election, they might send the surplus population of St. Lawrence (supposing they were men of such principles), over into the counties of Clinton, Warren, and Essex, and down to Fulton and Hamilton, and by a residence of sixty days, they would be enabled to carry so many assembly districts as to decide the result of the Senatorship. Or, that I may not seem invidious as to party, you may take the forty-six thousand surplus of New York city, and send them up along the line of railroads and along the Hudson river, and produce the same result. In the old Constitution this required residence was six months; the Constitution of 1846 reduced it to four, and to my mind four is as small a limit as expediency would require, and the result of any further restriction will be bad.

Mr. C. C. DWIGHT—I do not conceive that a residence of four months is to prevent colonization entirely, but I understand that requirement is in its reason analogous to the requirement of one year's residence in the State, before a man shall be authorized to vote. That is to say, it is to secure an incorporation as it were into the body politic of the county of which he is to become a citizen, that he become acquainted with the people, and with the institutions of the county. There is a great multiplicity of county officers to be chosen, and it is intended there should be such a residence required as will make a man really a citizen of the county, before he shall be entitled to vote therein. I conceive that to be a stronger reason for requiring a four months' residence, than the reason that it will operate against colonization to carry an election.

The question was then put on the amendment of Mr. Van Campen, and it was declared lost.

Mr. MERRILL—I offer the following amendment:

Insert after the word "suffrage," in the second line of the second paragraph, the words, "idiots, lunatics and," so that it will read: "Laws may be passed excluding from the right of suffrage, idiots, lunatics, and all persons who may have been or may be convicted of bribery, larceny," etc.

The question was put on the amendment of Mr. Merrill, and it was declared carried, on a division, by a vote of fifty-three to thirty-four.

Mr. AXTELL—I offer the following amendment:

Insert after the word "crime," the words following: "All deserters from the military or naval service of the United States, and all persons who have been voluntarily engaged in rebellion against the United States."

I do not propose to discuss this subject at any length, but I simply wish to say, that this amendment, if adopted, would probably prevent from voting about thirty thousand persons in this State and perhaps more. There are on the rolls in the

Adjutant-General's office, about twenty-four thousand deserters. And as I am informed by gentlemen who know very well about it, there are some ten or fifteen thousand who were engaged in the rebellion against the United States, who voted in this State at the last election. Then there are a large number of persons who left the State for the purpose of avoiding the conscription. Of all these classes there are probably twenty or thirty thousand still in the State, who are voters. I believe that by adopting this amendment, we shall say that we believe citizenship is a sacred thing, and then there is a difference between a loyal man and the man who is not loyal, that there is a difference between the man who stood faithful in the battle front and the man who deserted his colors.

Mr. BARNARD—I have this suggestion to make to the gentleman from Clinton [Mr. Axtell], to insert in his proposition a provision excluding from the right of voting the men who paid \$300 to be relieved from the conscription. I think that if you want to give this privilege only to those who went to the battle front, those rich men who were able to escape by the payment of \$300 ought to be prevented from voting as well as those who were real deserters, or who sought to leave the State.

Mr. LANDON—I submit whether that will not contravene the provisions of the Federal Constitution, which provides that no bills of attainder or *ex post facto* law shall be passed. At the time these men deserted they were entitled to vote and this is a proposition to deprive them of that privilege.

Mr. BICKFORD—Mr. Chairman, I am not in favor of excluding any man from suffrage who has hitherto enjoyed it. My idea is to extend the right of suffrage, and I shall therefore oppose the amendment of the gentleman from Clinton [Mr. Axtell.] I do not believe that people who are the objects of government, citizens of the United States and of this State, should be deprived of the right of voting on any such ground as this. It would cause altogether too much confusion and trouble, and is not a proposition which can be well enforced; it will make anger and ill blood, and cause a great many evils. I hope, therefore, that it will be voted down.

Mr. GRAVES—I ask, Mr. Chairman, if the question is not divisible?

The CHAIRMAN—The Chair is of the opinion that it is.

Mr. GRAVES—I would like to have a division on the first portion of it.

Mr. COMSTOCK—The objection I have to that proposition which must control my vote, is, that it is in direct contravention of the Constitution of the United States, which prohibits any State from passing any bill of attainder or *ex post facto* law. Now, a provision in the State Constitution, as well as an act of the Legislature, may be liable to the objection of being an *ex post facto* law. That which a State cannot do because it is prohibited by the Constitution of the United States it cannot do in any form, whether in the form of legislation or in the form of the Constitution or organic law. Now, with regard to this, entire proposition, it proposes to



disfranchise a certain class of persons for what? Not for offenses hereafter to be committed, and for which they may be tried and punished, but for past offenses, which have been long ago completed and consummated. If we adopt that proposition, we now prescribe and ordain a new punishment for an old offense, a punishment which could not be inflicted in any form according to any Constitution or law existing when the offense was committed. That is the very definition of an *ex post facto* law, and that is the objection to the entire proposition which ought to dispose of the whole of it. This exact question was not long ago decided by the supreme court of the United States in a case arising under the Constitution of the State of Missouri, as this would arise under the Constitution of this State if we adopt this amendment. The Constitution of the State of Missouri disfranchised certain persons for the very offenses named by the gentleman from Clinton [Mr. Axtell] in the amendment offered. The question whether that was a lawful disfranchisement went by appeal to the Supreme Court of the United States, and that provision of the Constitution of the State of Missouri was adjudged by that high tribunal to be null and void. Now, I say that this Convention should not run directly in the face of the solemn decision pronounced by the highest authority in the land.

Mr. McDONALD — After the statement of the gentleman from Onondaga [Mr. Comstock], as to the decision of the United States Supreme Court, it may seem entirely useless to say anything on the other side; but the reason I am in favor of excluding men of the last two classes named, is not for a punishment, but for the reason that every one of these persons has shown that he is not fitted to exercise the elective franchise. They exhibited it at a time and in a manner that cannot be mistaken. I refer to the two latter classes. I am not in favor of excluding deserters, for this reason simply that a desertion may depend on circumstances. From those who were in the army, I understand that desertion often was to get rid of and to escape from cruel officers, or something of that kind, and for this reason it may not be well that those who did not go to the war to say that they would not have deserted if they had gone. But with regard to the other two classes, they stood like all persons who were at home, on the same foundation on which we all stood during that time of trial, and I say that any man who, during that time of trial, did not go to the war, and who either voluntarily joined the rebellion and took up arms against this government, or who to escape the ordinary burdens of citizenship, ran away to another country; that man showed beyond dispute that he is not fitted to exercise the right of a citizen of America and of the State of New York. That is the reason, and I put it upon that ground, and not as a punishment. Any man who will not stand by his government in the ordinary exercise of the duties of citizenship, at a time of trial, is not entitled to the highest prerogative that government can give.

Mr. HAND — I would ask the gentleman from Onondaga [Mr. Comstock] whether this decision

of the supreme court was with reference to a constitutional provision; or a statute.

Mr. COMSTOCK — It was a constitutional provision. In the case to which I referred it was a clergyman who was disabled from preaching by his refusal to take the test oath.

Mr. HAND — That was a punishment. Now with reference to the constitutional provisions that we may make, I regard the matter as standing precisely in this condition. We proceed to organize the fundamental laws of this State precisely as though we never had a Constitution; all the powers that inure in us as a people are precisely as though no constitutional provision had ever existed in the world and we were beginning *de novo*. Now, let a people come together and form a government for themselves, they begin to look around (not under the natural law) to see what portion of the citizens may justly enjoy the elective franchise, and we exclude certain persons for certain reasons. We exclude the female for the reason that the best interests of society would not be promoted by allowing her to vote, we exclude idiots because they are disqualified from the exercise of it by their mental condition, we exclude criminals because they have forfeited the right of citizenship by their crimes and are unsafe persons to be intrusted with these important responsibilities, and so we may go on and exclude on various grounds every person we may deem unsafe as a citizen. This is in no sense a punishment for crime, it is in no sense judging judicially of a man's conduct, it is in no sense a penalty, it is in no sense like the case mentioned by the gentleman from Onondaga [Mr. Comstock], but we proceed to examine the condition and character of every person presented before us with reference to his qualification for citizenship to see whether the interests of the State would be safe in his hands, and we pass upon them separately. Now, here is a great class of people who by deserting their country in the hour of their country's peril I deem unfit for citizenship; I think they have shown that disregard for our institutions, for the great principles of liberty intrusted to their care and keeping as to render them unfit to enjoy the privileges of citizenship, unfit recipients of that power, and for that reason we exclude them. It is no *ex post facto* law, it is no law at all, it is simply judging of the qualification of the citizens as though we were beginning anew, as though the existence of these persons had never been known, and we look at their qualifications to see whether we will intrust them with this power. That is the way I regard it, and I think it is perfectly legitimate. With regard to what the gentleman from Kings [Mr. Barnard] said about the rich men who bought off for \$300, let me tell him that this \$300 was not paid generally by the rich men, but by contribution to relieve the poor man (who had a family he could not leave) from the liability to that draft pursuant to law.

Mr. WEED — I would like to ask the gentleman a question. Did the rich men in your part of the country go in the army?

Mr. HAND — Some of them did. We have not many rich men there.

**Mr. GRANT**—By section 21 of the act of Congress, approved March 3, 1865, it is provided as follows:

*And be it further enacted,* That in addition to the other lawful penalties of the crime of desertion, from the military or naval service, all persons who have deserted the naval or military service of the United States, who shall not return to said service, or report themselves to a provost marshal within sixty days after the proclamation hereinafter mentioned, shall be deemed and taken to have voluntarily relinquished and forfeited their rights of citizenship and their rights to become citizens; and such deserters shall be forever incapable of holding any office of trust or profit under the United States, or of exercising any rights of citizens thereof; and all persons who shall hereafter desert the military or naval service, and all persons who, being duly enrolled, shall depart the jurisdiction of the district in which he is enrolled, or go beyond the limits of the United States with intent to avoid any draft into the military or naval service, duly ordered, shall be liable to the penalties of this section. And the President is hereby authorized and required forthwith, on the passage of this act, to issue his proclamation setting forth the provisions of this section, in which proclamation the President is requested to notify all deserters returning within sixty days as aforesaid that they shall be pardoned on condition of returning to their regiments and companies, or to such other organization as they may be assigned to, until they shall have served for a period of time equal to their original term of enlistment."

Sir, no single word has fallen from my lips in the discussion of the suffrage question in Committee of the Whole. Indeed, sir, I did not call my friend from Jefferson [Mr. Bell], to account yesterday when he charged me with being absent for two weeks, for the reason, I suppose, that he had heard nothing from me in this discussion. Sir, in regard to the statement of the gentleman from Onondaga [Judge Comstock] as to the Missouri case, and of the Supreme Court of the United States having pronounced this proposition to disfranchise deserters and rebels as *ex post facto* and unconstitutional, my first answer to that is, that that case did not arise on the question of suffrage, but on an attempt to deprive a person of the enjoyment of a personal right to practice a certain profession—that of preaching for his support—unless he should first take a certain oath, that he had not at a time previous to the passage of a statute, penal in its nature, been engaged in rebellion. This was held to contravene a personal right to labor and support his family in a justifiable occupation. The doctrine that a law is unconstitutional by reason of its being *ex post facto*, is not applicable to the determination of the lodgment of the elective franchise in the formation of the Constitution. In framing the fundamental law we withhold the privilege from those who have heretofore shown themselves unfit to be intrusted with it, as well as from those who shall hereafter show themselves unworthy of it. We are not making laws to punish crime, but determining the kinds and

classes of persons to be intrusted with the privilege of a voice in the government of the State. Now, sir, I am in favor of withholding the elective franchise from deserters and from those who voluntarily engaged in the rebellion. And it is upon these grounds, first, we demand that a person to be entitled to the privileges of a voice in the government shall be a man of integrity. The deserter is not a man of integrity. If a deserter from the service, he has disregarded and violated a most solemn oath of allegiance taken when he entered the service; and if a deserter from conscription, he has disregarded and violated the honor and obligations of a man, as a member of society, as a citizen, and as a defender of his home, his government and its flag. In both cases he proves himself false to the highest and most sacred duties and obligations of citizenship. He occupies a position far more detestable than an open enemy. He carries within his traitorous heart the evils of misplaced confidence, and in front of the enemy his crime deserves, and his punishment is, death by the military code. In the second place, we should demand of an elector that he shall be loyal to the government and have at heart the interest and welfare of that government. The stern and terrible lessons of the war admonish us to leave no power or responsibility of the government resting with traitors. The safety of the government, its power to protect, preserve and defend itself, depends upon the deep interest and unwavering determination of the governed, who must be both its supporters and defenders. Shall we say that the coward who skulks at the approach of war, the traitor who steals the guise of a friend, and with a heart blacker than a spy conveys vital information to the enemy, the voluntary rebel who stabs at the life of the nation, are to be clothed with citizenship and the elective franchise in this great and patriotic State? The voices of thousands of the loyal and brave answer, no. These deserters are criminals, vagabonds and bounty jumpers, and cowards, who have not the loyalty, integrity, courage or manhood to protect, preserve or defend the government or its flag, and for these reasons should be excluded from the ballot-box, that great fountain of purity and preservation. There are other reasons why they should be excluded. If we allow them to exercise the right of franchise we place them upon an equality with our good and brave men. Sir, when we determine that a deserter (and I care not who he is, for a deserter from the army and from conscription in principle are the same, the man is the same), shall be placed upon the broad level with a true and loyal American citizen, we do injustice to that citizen. The very moment we say to a hundred thousand war-worn veterans who came home from the war bronzed with southern suns, and swarthy with the smoke of battle, that they shall vote side by side with the deserters and rebels whom they have learned by the severe lessons of war to despise, we degrade those defenders of the Union; the very moment that we raise the deserter, the man who deserts his country, his army and his flag in time of war, and the unrepentant rebel guilty of treason and murder, to

equal rights with all other American citizens, we degrade American citizenship. We should demand of a man to be a citizen and a voter of this State, that he be loyal to his country, loyal to his flag, and have courage to defend it when attacked by foreign or internal foes. Now, sir, there are many voices coming to us upon this question. We must recollect that in the war from which we have just emerged, three hundred thousand brave young men have been sacrificed; we must recollect that as we pass up and down the Mississippi, up along the valley of the Cumberland, and across the crimson fields of Virginia, the graves of Union soldiers are as thick as the leaves of autumn; we must recollect that from every one of those graves, from every one of those swampy, murky graves at Belle Isle and Andersonville, comes a voice to us saying that our lines were thinned by desertion, the enemy was informed of our position and strength by deserters; we ask you to exclude them from the rights of citizenship in the land where once we lived. We should recollect that the widow leading her children to-day, by one hand her little daughter, who can never clasp her arms around the neck of her father again, by the other the little son who inherits the blood of the patriot father, is asking us that that boy's vote, when he arrives at maturity, shall not be canceled by the vote of a deserter. Sir, the appeal of the lame and crippled heroes of the war comes to us in the person and voice of James Tanner, a doorkeeper of this Convention, both of whose legs were shot away in battle, praying us that "his vote shall not be canceled by that of a deserter." Why, sir, the examples that we set to the world should be taken into consideration on this occasion. While the Congress of the United States have enacted that the deserter from the army or navy has relinquished his right to citizenship of the United States, and have declared that he shall hold no office of power or trust under the United States by or under the laws or government of the United States; Sir, are we to be less patriotic, less wise, less vigilant, less careful than the Congress of the United States on this subject? Shall we set a different estimate on the value of integrity and loyalty? Sir, our record must answer this question. And here let me say, that a nice distinction is sought to be drawn in this discussion on this suffrage question, and from that nice distinction we are told that men may be electors and citizens of the State who are not citizens of the United States. I say this distinction, if it really exists, makes it the more important that we be careful to insert a provision in the Constitution of this State depriving deserters and rebels of citizenship, depriving them of that great power, the elective franchise, by which they may control the destiny of the State of New York, and, sir, it was in view of these provisions in the laws of the United States and in undertaking a manifest duty that we owe to the armies and navy of the United States, to our country, to the citizen soldier who is a resident and inhabitant of the State of New York. I have drawn this provision designing to suggest it, not as a subject of State action, but as an absolute provision in our State Constitution,

upon the same subject to which the one under consideration refers. This provision is in these words:

"All persons who have deserted or who shall desert the military or naval service of the United States in time of war, and all persons who being at the time duly enrolled, have departed or shall depart the district in which so enrolled, or have gone, or shall go beyond the limits of the United States with intent to avoid any draft duly ordered, and all persons who shall have been voluntarily engaged in rebellion against the United States, shall be excluded from the right to vote in this State, unless pardoned either by proclamation of the President of the United States, authorized by law of Congress or by the Governor of the State, with consent of the Senate by a two-thirds vote."

Now, sir, in the absence of the provision in our Constitution that an elector must be a citizen of the United States, I am in favor of the pending amendment, suggesting and hoping, however, that the gentleman who offered that amendment will adopt this provision or one in its place which shall make a provision of our Constitution absolute in its terms, rejecting deserters and rebels from citizenship of the State of New York, as the law of Congress is absolute in its terms as to citizenship and the rights of deserters within the United States, so as not to leave it as the subject of future and doubtful legislation.

Mr. MERRITT—I would like to ask whether the term "citizen of the United States" as used in the report of the committee would apply to those who were declared not to be citizens by this law of Congress, if not I am in favor of the amendment proposed by the gentleman from Clinton, [Mr. Axtell]. I am not in favor, however, of the second part of the proposition. I believe there is a difference between those who voluntarily take upon themselves a position in the army of the United States and those who ran away from the conscription; the circumstances under which the crime, as we so call it, was committed are different. We all very well know that when this conscription was ordered, and when its actual necessity existed, there were large numbers of persons all over the country who encouraged these people to avoid conscription, men who believed that in the process of putting down the rebellion the loyal forces would be beaten and that any sacrifices we could make would be useless, and they were encouraged also, by large numbers of persons remote from the scene of conflict, and away from those surroundings which would tend to stimulating any man, it seems to me, of loyal heart, to stand in defense of the nation, therefore there is some sort of excuse that they—many of them young—were influenced to go away. I would not put it upon this class; besides, it would be very difficult to determine judicially the class who absented themselves. But not so with those who deserted from the army, their names are a matter of record and can be definitely and clearly settled; and if the language of the Committee on Suffrage does not cover the case, I hope this amendment will be adopted.

Mr. PROSSER—I move the committee do now rise, report progress, and ask leave to sit again.



The question was put on the motion of Mr. Prosser, and declared lost.

Mr. HUTCHINS—I am not prepared to say whether as a matter of expediency or policy I would vote to insert this clause, as proposed by the member from Clinton [Mr. Axtell], in the Constitution to be adopted by the people, but I cannot adhere to the doctrine advocated by the gentleman from Onondaga [Mr. Comstock], that it would be in its nature an *ex post facto* law. Unless he claims, as the gentleman from Rensselaer [Mr. M. I. Townsend], that this right of voting is a natural right, or that it is a divine right, or that it is an inalienable right, or some other than a political right, I don't see how he can sustain his position. Now as I recollect the case that came up in the United States court from Missouri, the proposition there settled was very correctly stated, as I remember it by the gentleman from Delaware [Mr. Grant]. A clergyman refused to take what was called the test or iron-clad oath, that he had not been engaged in the rebellion, or afforded aid or encouragement to traitors; refusing to take that oath he was debarred the privilege of practicing his profession; he appealed from that decision, and the United States court decided, as I understand the decision, whatever *dicta* there may have been in the language of the learned Justice Field, who delivered the decision, that that profession was a franchise, it was a right of property; without it this man could not support himself or his family, and when you took that away from him you took away a property franchise that belonged to him, and it was therefore an *ex post facto* law. To carry out the principle contended for by the gentleman from Onondaga [Mr. Comstock], how can you pass a law that will prohibit a man from voting who has been convicted of the crime of larceny. You provide for that in the provision to be submitted to the people, those who have been or may be hereafter convicted of larceny or other infamous crime. Suppose the crime has been committed previous to the adoption of your Constitution and the man is convicted after you have adopted it, can he be set up *ex post facto* law as a reason why the people of the State of New York cannot deprive him of the right of suffrage. No, sir, deserters come under the same clause, and the people in their sovereign power have the right to exclude from suffrage any class of persons to whom in their discretion they think granting the privilege to, would endanger the right and the privilege that is conceded to us.

Mr. E. BROOKS—I wish to say but a word or two upon this amendment, not to discuss the constitutional question, for there is a difference among the members of the bar in reference to its import, although it seems to me, as a very humble layman, that the fact that this amendment is introduced avowedly to punish a large number of citizens for an alleged offense against the State and against the government of the United States, and that offense committed during the war recently ended, proves it to be what may be fairly and properly, although perhaps not legally called an *ex post facto* law. The avowed object of this amendment is to punish men—for what? For desertion? When? During the war which has

been ended some thirty months. Sir, it seems to me that it is punishment for an offense which has been committed during a period of time long passed. Sir, if there is any doubt that the State of New York is a progressive State, I think it is proved by the amendment now pending, as well as in many others which have been introduced during the session of this Convention. Sir, when will all these things end? Gentlemen time and again have arisen upon this floor and denied that this was a punishment. Sir, is it anything else? When you address our understandings and our hearts, does not every man that has a particle of common sense in him know that it is a punishment, moved in order that it may be a punishment and intended to operate upon thirty thousand people in this State. This is the purpose if not the motive of it. This is the precise effect of it if the amendment shall be adopted. I submit to the people of this State in Convention, that we cannot afford to indulge in this kind of punishment. What, sir, will be done if we adopt the report of the Suffrage Committee which has been introduced here? The original proposition was to disfranchise (let us speak the truth plainly) some forty or fifty thousand white men, one-half of them poor men or paupers and another class of them alien citizens who have filed their naturalization papers—to disfranchise, I say, some forty or fifty thousand white men and to give the suffrage to some seven or ten thousand colored men in this State. It is now proposed to add to these forty or fifty thousand, fifty thousand others. Sir, the people of this State are not so blind that they cannot see through the motive and object and the effect of an amendment like this. Sir, as a business man, I think it is not wise to adopt either this amendment or any of those that have been proposed, and which stand before the committee in connection with it. To disfranchise so many thousands of deserters and some twenty thousand other persons named, is to banish them from the State of New York practically, with all their industry, with all their wealth and with all the advantages of such a population. Sir, I had supposed after the long period that has transpired from the declaration of peace by the surrender of General Lee, that there would have been a period, and long ere this hour, when we should cease to indulge in that bitterness of feeling which will result, practically, in personal banishment, and which is proposed for purposes of punishment. All this shows the absence of every feeling of kindness and of mercy toward a class of men whom we know and feel to be wrong, but who have been most terribly punished for the crime of rebellion. Sir, in the history of the civilized world, there never was any rebellion like that just passed in this country. Yes, sir, never were a people so much punished as were those in the Southern States who engaged in this rebellion. Within ninety days past, in the county of Polk, in the State of Georgia, my attention was called to seventeen hundred white men willing to work, unable to find employment, and literally begging for bread, and most thankful to the people of the north,



and of the great west for their contributions of corn which they made into bread at the commencement of the week and the only food which they enjoyed from the beginning to the end of that week. Thousands and thousands of these people literally starved and suffered as a punishment for the errors and crimes which they committed against the government. I submit to the mover of this amendment and to the advocates of this amendment that these people have been severely and terribly punished.

Mr. MERRITT—Does the gentleman regard this proposition as partisan in any sense?

Mr. BROOKS—Sir, I do regard it as partisan.

Mr. MERRITT—For what reason.

Mr. BROOKS—Sir, on the very face of it it is partisan. Every man knows it to be partisan. Let me go on. I know what the gentleman will say in answer to my assertion. Perhaps he thinks it may operate a little more upon the democratic party than upon the republican party. Let it be so.

Mr. MERRITT—I would say, it has been alleged by the democrats that they sent more men to the war than the republicans, and they think they are a little better off in that respect; but I am in favor of disfranchising them, no matter what their politics.

Mr. BROOKS—Whether they are republicans or democrats, I am against disfranchising them. I regard them as citizens of the United States, who, it may be, have committed the crime of desertion or rebellion, but all these may have repented in dust and ashes for the commission of their wrong. I speak, sir, in behalf of a class of persons in whom I have no more interest than any other gentleman, perhaps less than many others. I bespeak for them through our action here a little of that human kindness which it seems to me, in times like these, so long after the rebellion has ended, is eminently becoming, and which should animate the minds and hearts of all generous people. Forgiveness is a great example taught us by the Almighty himself. It is a sentiment implanted by God in the heart of every true man. The Son of God has said if you forgive not men their trespasses neither will your Heavenly Father forgive you your trespasses, and let me say here in regard to this matter of mercy in the language of the poet that—

“The quality of mercy is not strain'd;  
It droppeth as the gentle rain from Heaven  
Upon the place beneath: it is twice bless'd—  
It blesseth him that gives, and him that takes:  
'Tis mightiest in the mightiest; it becomes  
The throned monarch better than his crown:  
His scepter shows the force of temporal power,  
The attribute to awe and majesty,  
Wherein doth sit the dread and fear of kings:  
But mercy is above this scepter'd sway:  
It is enthroned in the hearts of kings,  
It is an attribute to God himself,  
And earthly power doth then show likest God's,  
When mercy seasons justice.”  
\* \* \* \* \* “We do pray for mercy,  
And that same prayer doth teach us all to render  
The deeds of mercy.”

Then in the name of mercy, and in the name of justice, I protest, against the disposition manifested in these various amendments, the end of which is to punish men for offenses committed so long ago in the past time.

Mr. M. I. TOWNSEND—I agree with the gentleman from Richmond [Mr. Brooks] that this is a progressive age. I think that all persons who have progressed from 1855 to 1867, and have heard this most eloquent and touching appeal which the gentleman from Richmond has made in behalf of citizens of foreign birth, must feel at least that one portion of the State of New York has been making rapid progress. I congratulate the gentlemen of foreign birth upon their new advocate.

Mr. BROOKS—I said nothing of citizens of foreign birth. There were very many citizens who were not of foreign birth.

Mr. M. I. TOWNSEND—My friend is mistaken, as he will see. He spoke in most terrible condemnation of the committee who proposed to prevent a large number of persons of foreign birth—aliens, as I think the gentlemen called them, from becoming citizens in 1868 in season to vote.

Mr. BROOKS—I did not know they were deserters.

Mr. M. I. TOWNSEND—Not deserters. The gentleman was not at the moment speaking of deserters, but of foreigners? It was out of the line of his argument, I know, but his feelings were so glowing in favor of the citizens of foreign birth that he had to turn out of the line of his argument against excluding deserters from the elective franchise and bring them in and defend them. I congratulate them upon their advocate. I wish to say one thing more in regard to it. I think that gentleman will find in this case, as in every other where they undertake to lay down a rule of action based upon no principle, that it is perfectly uncertain where it will lead. I understand that the gentleman from Onondaga [Mr. Comstock] concurs with the majority of this house in the belief that I put forth strange doctrines when I said that man had a natural right to participate in the administration of the government under which he lived. Under that doctrine the gentleman from Onondaga [Mr. Comstock] would find himself fully able, to do what is proposed to be done in this case. But I understand that the gentleman believes that society has a divine right, to exclude people at the polls from exercising the elective franchise. I understand the gentleman from Onondaga finds full authority to exclude a black man, and that he finds full authority to exclude women, and full authority to exclude any one he wants to exclude, but he cannot find any authority to exclude deserters or any other man whom he does not desire to exclude. He cannot find any way to exclude traitors, why? He does not wish to exclude them. But a word with my friend from New York [Mr. Hutchins]. Let me tell him my doctrine does not create the necessity of allowing a traitor or deserter to vote if we can ascertain who a deserter is. I do not feel myself at liberty to vote for this amendment, not because of any difficulty in regard to my right to have them excluded, but because I consider that it is utterly impracticable to determine now who are guilty deserters and who are not. I should be very unwilling to take the muster rolls in our Adjutant-General's office to determine whether a man was a guilty deserter or not. I do not believe that those rolls

would do justice to the men whose names are marked upon them as deserters. Did I know of any mode by which it could be ascertained who did desert their country in the field intentionally and were really guilty as deserters, I should vote for this amendment, but as I do not know of any mode by which it could be done, I shall not vote for it. In placing my action on this ground I think I act consistent with the principle which I understand underlies our government, and the question of whether a man has a natural right to participate in the administration of government, is one that has got to be determined in the court of morals. It is a moral question, and I am called upon to act under no other rule. This idea of its contravening the provision of the Constitution of the United States, that you should pass no *ex post facto* law, my legal friends will allow me to say is simply a legal absurdity. We are not putting a punishment on these men when we say they should not participate in the use of the elective franchise within the meaning of the Constitution of the United States.

Mr. BROOKS—Why do you do it, then?

Mr. M. I. TOWNSEND—I would not do it in this case at all. If I do it at all I would do it on the ground that such men had, in my opinion, in this moral court, called by the people, forfeited their right, and I have a perfect right to say, sitting here, forming one of the Convention, whether they shall participate in elections or not. This court of conscience is the court in which alone this Convention can try deserters, and the United States Constitution has placed no barrier in the way of the action of that court.

Mr. GOULD—I rise sir, to protest, as I do protest, against the cool assumption of the gentleman from Richmond that this is *avowedly* designed as a punishment. Sir, nobody has avowed that doctrine upon this floor, not a man with the exception of himself [Mr. Brooks]. No person who advocates this measure has an idea of advocating it in the nature of a punishment at all, and therefore the section from the bill of rights which declares that no *ex post facto* law shall be passed or no bill of attainder has any application whatever to this matter. Why, sir, we are sitting here as a Convention to say to whom shall be delegated the expression of the sovereignty of the people of the State of New York. We have a right to exclude from it those whose voice in such an expression would be used dangerously to society. Sir, let me ask any man here whether he supposes a man who deliberately and coolly, in the hour of his country's agony, and the hour of her peril, shall deliberately turn his back upon her, and go away out of the country with the express purpose of avoiding his share in her defense, the defense of her women and children, has a right to make laws? I ask, sir, if a man who has deserted his army in the very face of the foe, and when that desertion may cause the destruction of the army in which he is engaged, whether he shows a sufficient amount of patriotism and virtue to be intrusted with the expression of that sovereignty? Sir, there may be men who suppose that this is a right given to make voters.

But if there are those that entertain the conscientious belief that such patriotism as this is sufficient to make a voter, then, sir, I say "O, my soul, enter not into their secrets and into their assemblies mine honor be not united." Now, sir, in regard to what has fallen from my friend from Rensselaer [Mr. M. I. Townsend] I see no difficulty whatever. You have only to incorporate into the oath, which may be offered to any person when challenged, a declaration that he has never left the country to avoid the draft, or deserted from the army, then you have proof that you require and as much as is necessary; you do not need to pass any law whatever for this purpose; if he shall falsely so swear, and it shall be found after inquiry that he has sworn falsely, then, sir, he is liable to the pains and penalties of perjury, and may be proceeded against. I see no sort of difficulty whatever in making this discrimination. We can deal with these deserters with perfect accuracy, and they can be sufficiently identified by the simple test which I have proposed.

Mr. HARDENBURGH—It strikes me that there is great force in the objection made by the distinguished gentleman from Rensselaer [Mr. M. I. Townsend], that it is utterly impossible to determine at the polls who those deserters are, who those individuals are that left their country for the purpose of avoiding the draft. It was stated by my friend from Columbia [Mr. Gould], just as he took his seat, that it could be put in this test oath, and that if they committed perjury they could be punished. I was about to ask him whether they are not now each and every one of them that you desire to exclude, liable to the pains and penalties of the statute referred to.

Mr. GOULD—I only hope it will be enforced against them.

Mr. HARDENBURGH—You are only accumulating the punishment against them. Now, sir, as to those who are sought to be excluded in this proscriptive article, that left the country, as charged here, for the purpose of avoiding the draft, how on earth is any man to tell what they went to Canada, or to Europe, or to France, for? Are the inspectors of elections to take up that challenge and call witnesses and examine it all day long, and until some objection is found, either to his heart or head, in respect to all these things that are in this constitutional provision contained. And does not my friend know in respect to those that are marked on the roster or muster rolls, or registered in the office of the Adjutant-General, that many and many a friend has had to go to that office and have the word "deserter" erased from the book for the purpose of protecting the tarnished reputation of a young soldier who had lost his life in battle. It is impossible for you to incorporate this provision in the article now to be passed by this body, not to do injustice. And I would ask my friend from Delaware [Mr. Grant], a question; I understood him to have asserted here, that no man who was not a man of integrity, no man who would not obey the call of his country in its hour of peril, ought to vote, then leaping away up into that wild region of fancy, and that great plain from which he and others have talked and

kept us here for the last three weeks, instead of coming down to solid facts. I desire to ask him if he would include in this provision, and incorporated into the Constitution, the body of his anti-renter? Did they not violate law; did they not organize a rebellion in this State, until they had to be put down by the military power of this State, and was not more than one-half of them the gentleman's constituents.

Mr. GRANT—I would say that I had said nothing about law-breakers. My argument was simply based on the men that deserted the army and navy of the United States. I would like to say one other word—

Mr. HARDENBURGH—No; that answers me exactly. Is not a traitor a law-breaker?

Mr. GRANT—A traitor is a law-breaker; but a law-breaker may not be a traitor.

Mr. HARDENBURGH—A traitor of that description is a law-breaker, and is a traitor by the very Constitution you are about to make, and by the laws you have passed in this State, and it comes from the gentleman with more of an ill grace than from any other member of this Convention, that he should have made such a speech and such remarks as he did on this proposition.

Mr. ROBERTSON—I have a word to say in addition to the remarks made by my friend who has just sat down, in reference to the anti-renters of this State. It became necessary to declare, in the Congress of the United States, these people in a state of insurrection, in order to bring to bear upon them the laws of the United States, and any insurgents who are in arms against the laws of the United States are traitors. I have also one other matter to which to call the attention of the Convention. Just after the struggle of our revolution, upon the adoption of the first Constitution of the State of New York, when feelings ran as high as they ever have done during the recent contest, and after we had settled down in a condition to make the first Constitution of this State, even with the feelings of those who had been struggling against a powerful enemy—a band, although embittered against those of their fellow countrymen who had adhered to the parent country—they had been ridden to death by some of those who thus became traitors to the new State—no such proposition was inserted in the Constitution of this State. Looking back to that precedent, I think we can find no better or more merciful precedent than to follow that which was set by our ancestors.

Mr. WAKEMAN—I have some difficulty in voting on this subject, I have not one word to say in favor of that class of men who deserted their country in her hour of peril, but my difficulty here is how shall we determine that question. If they can be convicted under an indictment, I should have something definite, and in that case they would stand like other criminals and they could be pardoned. Now, sir, there is no one to determine except the man himself to take his oath. We have a committee on pardons here, and we can, perhaps, give the power to pardon any criminal who may be convicted of any crime in this State. In the case of traitors, or men charged to be

traitors, having deserted their country, how shall we determine it unless it is determined by the very action of the voter himself? How can we remedy it if we put it in the Constitution? Can we expect executive clemency to reach him? It seems to me we cannot. If we cannot reach him, should we put him beyond a man who takes the life of another. It seems to me not. A word or two more. I am not quite prepared to say we should make this sweeping declaration against that class of men. As I said before, I have no sympathy with them whatever; but we ought to do everything we can consistent with the laws of our common country to restore peace to this land and to this State. Now, these men have transgressed, with a grievous wrong. Let us forgive them if they ask to be forgiven, as we would other criminals, and not put them beyond the reach of a pardon by constitutional provision. On the simple question of excluding men that are traitors, if they are convicted of crime under an indictment, I would place them with other criminals—the man that steals your horse and breaks into your house, or takes the life of another. I would place them on the same footing, but I would not place them there unless they had a fair trial before a jury of their country, and were convicted of the crime they are charged with. Under these circumstances I believe I shall be compelled to vote against the amendment.

Mr. RATHBUN—I find in looking at the law under which delegates to this Convention are elected, that the provision contained in the amendment was inserted, and it further provides that deserters shall not be allowed to vote on the adoption of the Constitution. Sir, these persons that deserted were mostly young men, perhaps the large majority of them were young men, and although the crime was a very great crime, and one that is to be deplored by every man in the country, still there is to some extent an apology for these young men. We cannot any of us fail to remember that during that war, and during the trials under which the government was laboring for the purpose of obtaining men to put down the rebellion, that there were a great many men in this country, and all over the country, who were averse to the raising of men. They were hostile to enlistments and hostile to drafts,—these young men were in the habit of hearing, and had talks with, and were advised by this class of men. Many of the public newspapers in the country spoke wrongly on the subject of enlistment, and wrongly in regard to the object and purpose of the war. They spoke hostilely against the government, they attempted to bring it into ridicule and disgrace. These young men who read these papers, were educated in a measure by them. The voice was strong that came through those papers, and the voice from a large portion of the people was equally strong, and these young men were influenced. They were controlled in a great measure, and they have the apology to make that if they committed a great crime, it was done by the advice and under the influence of men that were older and were wiser as they supposed, and they acted upon their advice. Now, sir, I have to say for them, although I regret exceedingly that they



should have failed in that hour—that they have an apology that is very strong, to make to this Convention. They have a right to appear here and to point to you the influence which controlled, and which made them commit that crime. While I would be willing to vote for a disfranchisement of men of mature age, if they could be selected and if they were known, so that they should go down with the mark of Cain forever, I would do it willingly. It cannot be done without including among them these young men, boys eighteen years of age, and from that to twenty-one, and not even entitled to a vote. Under the influence of their fathers, under the advice of influential men in the neighborhood, they ran away. Why, sir, should they be punished for it, for obeying their fathers, for obeying the voice of men in the neighborhood, for obeying the influences and doctrines of the papers they read? Sir, it would be monstrous; it would be cruel and inhuman that such a doctrine should be applied to these young men. Therefore, upon that ground, and upon that ground alone, I shall vote against the amendment.

The question was then put on the first part of the amendment of Mr. Axtell, and it was declared lost.

The question was then put on the second part of the amendment of Mr. Axtell, and it was declared lost.

The question was then put on the third part of the amendment of Mr. Axtell, and it was declared carried.

The question was then put upon the proposition of the gentleman from Ontario [Mr. McDonald] as amended, which was declared carried.

Mr. POND—I wish to suggest that the amendment which I alluded to last night ought to go in the forepart of that section between the words "offer to" and the words "or terms." I move to amend it.

The question was then put on the amendment of Mr. Pond and it was declared carried.

Mr. BARKER—I move to amend the clause excluding persons engaged in the rebellion, by adding at the end "until they shall have been pardoned by the President of the United States, or the Governor of the State of New York."

The question was put upon the amendment of Mr. Barker and it was declared lost.

The question was then put on the first section as amended and it was declared adopted, on a division, by a vote of 70 to 45.

Mr. FOLGER—I move that the committee do now rise, report progress, and ask leave to sit again.

The CHAIRMAN—The Chair will inform the gentleman from Ontario that the committee will not have time to ask leave to sit again. The committee will be dissolved in a few moments under the rule of the Convention.

Mr. BARKER—The hour of half-past seven having arrived, I move that the committee do now rise, report progress, and ask leave to sit again.

The CHAIRMAN—The Chair will inform the gentleman that no motion is needed under the order of business, as directed by the Convention.

The time having arrived the committee will now rise.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. ALVORD, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office; that that they had gone through with a portion of the same, and made some amendments thereto, and the hour fixed upon by a resolution of the Convention practically discharging the committee from further consideration of the report, they had directed their Chairman to report the fact to the Convention, and to submit their action to the Convention.

Mr. FOLGER—I offer the following resolution:

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the report of the Standing Committee on the Right of Suffrage, etc., and the report of the Committee of the Whole upon the report of the said Standing Committee, if undetermined at this sitting, shall be the special order for to-morrow morning, immediately after the adoption of the journal, and for every succeeding morning at the same time, until the report of the said Standing Committee is disposed of in the Convention.

Mr. CHURCH—I move to amend the resolution that the report shall be printed.

Mr. FOLGER—I accept that.

The question was then put, on the resolution of Mr. Folger as modified, and it was declared carried.

The question was then put on agreeing with the report of the committee.

Mr. ALVORD—It strikes me, with due deference to the ruling of the Chair, that we have no report of the committee to agree to. We lay it before the Convention under the order of the Convention, and it is for them to act upon it.

The PRESIDENT—The Chair will state that this is an anomalous state of things, and will leave the Convention to adopt their own course of action.

Mr. ALVORD—It strikes me that the resolution offered by the gentleman from Ontario [Mr. Folger] as amended by the gentleman from Orleans [Mr. Church] will cover the whole case. It now is in the power of the Convention to be acted upon as a special order immediately on the incoming of the Convention to-morrow, after the reading of the journal. I move that the Convention do now adjourn.

Mr. FIELD—I desire to ask leave of absence for Mr. C. E. Parker, of Tioga.

No objection being made, leave of absence was granted.

The question was then put on the motion of Mr. Alvord, and it was declared carried.

So the Convention stood adjourned.

THURSDAY, July 25, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by REV. E. SELKIRK.

The Journal of yesterday was read by the SECRETARY and approved.



Mr. N. M. ALLEN asked for a leave of absence until Wednesday next, which was granted.

The PRESIDENT announced that the special order of the day was the report of the Committee of the Whole on the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office in words the following:

SEC. 1. Every male citizen of the age of twenty-one years who shall have been for thirty days a citizen and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county where he may offer his vote shall be entitled to a vote at such election in the election district of which he shall be at the time a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people; but such citizen shall have been for thirty days next preceding the election, a resident of the district from which the officer is to be chosen for whom he offers his vote; *Provided*, That, in time of war, no elector in the actual military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the State; and the Legislature shall have power to provide the manner in which, and the time and place at which such absent elector may vote, and for the canvass and return of their votes in the election districts in which they respectively reside or otherwise; "*Provided also*, That until the first day of January, 1869, a citizen who shall have been a citizen for ten days and is otherwise qualified, shall be entitled to vote."

§ 2. No person who shall receive, expect to receive, pay, or offer or promise to pay, contribute, or offer or promise to contribute to another to be paid or used, any money, or other valuable thing, as a compensation or reward for a vote to be given at an election, shall vote at such election; and upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm, before such inspectors, that he has not received, does not expect to receive, has not paid, nor offered or promised to pay, contributed, nor offered or promised to contribute to others, to be paid or used, any money or other valuable thing, as a compensation or reward for a vote, to be given at such election. Laws shall be passed excluding from the right of suffrage, idiots, lunatics, and all persons who may have been or may be convicted of bribery, or of any infamous crime, and all persons who have been voluntarily engaged in rebellion against the United States, unless pardoned by the President of the United States or the Governor of the State of New York. Laws shall be passed for punishing and for depriving of the right of suffrage, and excluding on challenge, persons who shall pay or contribute, or agree to pay or contribute, or who shall receive or agree to receive any money, property or valuable thing to promote the election of any particular candidate or ticket, or who shall make or be interested in any bet or wager dependent upon the result of any election.

The payment of the expenses of printing, of the circulation of papers and documents previous to any election, are excepted from the operation of this section.

§ 3. For the purpose of voting, no person shall

be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, of the United States, or of the high seas, nor while kept in any almshouse or other asylum, at the public expense, nor while confined in any public prison. And the Legislature shall prescribe the manner in which electors absent from their homes in time of war, in the actual military or naval service of this State, or of the United States, may vote, and shall provide for the canvass and return of their votes.

§ 4. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established. And the Legislature shall provide that a register of all citizens entitled to the right of suffrage in each election district, shall be made and completed at least six days before any election; and no person shall vote at such election who shall not have been registered according to law; but such laws shall be uniform in their requirements throughout the State.

§ 5. All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen.

§ 6. No person who is not, at the time of taking the oath of office, an elector, shall hold any office under this Constitution. All officers shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York; and that I will faithfully discharge the duties of (the office he is to hold) according to the best of my ability."

The PRESIDENT announced the consideration of the first section.

Mr. MURPHY — I propose to offer the following amendment to the first section.

"*Provided, however*, That no colored man not hitherto entitled to vote, shall be so entitled unless the qualified electors of the State, shall, at the general election to be held in November, 1867, on a proposition in relation thereto to be separately submitted to such electors, at the same time with the submission of this Constitution, determine in favor of extending the elective franchise to all colored men."

Mr. MURPHY—Mr. President, I now offer an amendment, which I offered in Committee of the Whole, which provides substantially for the submission of the question of negro suffrage separately to the people. A resolution was adopted, offered by the gentleman from Herkimer [Mr. Graves], to the effect that all questions of a separate submission of any part of the Constitution shall be deferred until the Constitution shall be framed by this Convention. I do not wish to infringe upon any rule or order of this Convention, nor do I do so in offering this amendment, in my opinion. I suppose that that resolution having been passed, by a majority of the Convention, less than two-thirds of those present, it is in conflict with the rules of this Convention which entitle me to offer this amendment. I will state further,

that I have somewhat modified the amendment in framing this, but it is substantially the same as it was before.

The PRESIDENT—The Chair thinks this amendment inadmissible under the resolution of the gentleman from Herkimer [Mr. Graves]. It knows of no standing rule in relation to a separate submission pertaining to the Constitution, but thinks that proposition, as all other propositions arising in the order of business, is susceptible to the motions prescribed by rule 23. It is the province of this Convention to postpone indefinitely or to a day certain any order of business from day to day.

Mr. MURPHY—I submit to the decision of the Chair and, therefore, propose the following further amendment:

The PRESIDENT—Does the gentleman withdraw his amendment?

Mr. MURPHY—I do not withdraw it, but I submit to the decision which I understand rules it out.

The SECRETARY proceeded to read the amendment.

Mr. MURPHY moved to amend the section as follows: After the word "every" in line 1, insert the word "white," and at the end of line 4, insert the words "and all colored persons qualified to vote by the Constitution of 1846."

Mr. MURPHY called for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. VERPLANCK moved further to amend the section by adding thereto the following:

No property qualification for eligibility to office, or for the right of suffrage shall ever be required in this State; but no colored citizen shall have the right of suffrage unless a majority of the votes cast at the next general election in this State shall, in addition to stating whether the vote is for or against the adoption of the Constitution, state that the vote is in favor of extending the colored citizen the right of suffrage.

Mr. RATHBUN—I rise to a point of order.

The PRESIDENT—The Chair rules that that involves a question of separate submission and cannot be received.

Mr. VERPLANCK—I appeal from the decision of the Chair. I do not desire to submit my proposition against the wishes of this Convention or against the ruling of the President, because I am satisfied that no man has ever presided over a public body who desired more ardently than the President of this Convention to treat all persons who come before him with fairness. In reference to the question of giving the colored man the right to vote, I am entirely willing that they should have that right; if the electors of the State so decide, but the rule that has been imposed upon this Convention is a pretty severe one. Now, occupying the position that I occupy here, willing to submit this question to the people and to acquiesce in any decision they make; as an affirmative proposition I do not desire to put it in the Constitution. I am willing to put it in the Constitution with the proviso that the people shall separately pass upon this question. The amendment which I have the honor to offer is not that this question shall be separately submitted to the

people, but that when they vote upon the question of adopting or rejecting the Constitution, they shall add to the ballot that they are for or against extending the right of suffrage to all colored men. This amendment rather prescribes the form of the ballot.

Mr. HITCHCOCK—I rise to a point of order, that the gentleman cannot discuss his proposition upon an appeal from the decision of the Chair.

The PRESIDENT—The Chair thinks the gentleman from Erie [Mr. Verplanck] is approaching the question.

Mr. VERPLANCK—I am very much obliged to the President for intimating that I am getting near it at all. I only desire to say that the gentlemen who feel as I do, desire that this question should be fairly represented here, and I submit that this amendment will give us a chance to be put properly upon the record, not that I would refuse absolutely, the right of the colored man to vote, but that we would give him this right, if the electors of this State so decide, and according to this amendment when the elector votes for or against the Constitution, he shall add to his ballot for or against negro suffrage. I submit that this is not a separate submission of this proposition to the people, and is therefore in order. Now, sir, I withdraw my appeal.

Mr. VAN CAMPEN—I ask for a division of the question so that we may vote upon the first part of the proposition of the gentleman from Kings [Mr. Murphy], to insert the words "white male."

Mr. PAIGE—I vote for this amendment under the expectation that the question of the extension of unqualified suffrage to men of color will be submitted to the people as a separate proposition, and I submit an amendment to the first section which expresses my views on this subject. I am in favor of a discrimination in the extension of unqualified suffrage to men of color. I would allow any man of color to vote who has borne arms in the service of the United States, and is now in that service, or has been honorably discharged therefrom, or who are of sufficient intelligence to exercise with judgment the right of suffrage; and if the qualified voters of the State determine in favor of unqualified suffrage, I most cheerfully acquiesce in that determination.

The SECRETARY proceeded to read the amendment of Mr. Paige, as follows:

Insert immediately after first sentence of first section:

"*Provided*, That there shall be submitted to the qualified electors of the State, at the general election to be held in November, 1867, a proposition in relation to suffrage to men of color, and in case such electors on such submission shall determine against suffrage to such men of color, then no men of color except those who possess the qualifications to vote, required by the Constitution of 1846, shall be entitled to vote at any election."

Mr. A. J. PARKER—I merely wish to say that I shall vote for this amendment with the confident hope that when the proper time comes, under the resolution adopted by this Convention, a further provision will be adopted, submitting to the people the question whether colored men shall be entitled to vote. With that view I shall

vote, hoping that the whole matter will be submitted separately.

Mr. S. TOWNSEND—Mr. President—

Mr. FOLGER—I rise to a point of order, that the gentleman has spoken before on this question.

Mr. S. TOWNSEND—Is there such a limitation as that?

The PRESIDENT — There is.

Mr. FOLGER—I insist upon the point of order.

The PRESIDENT—The point of order is well taken. The question is on the amendment of the gentleman from Kings [Mr. Murphy].

The SECRETARY proceeded to call the roll.

Mr. STRATTON—I ask to be excused from voting on this proposition, for the reason that I am paired off with my colleague, Mr. Gerry, who is unavoidably absent from the Convention to-day, but for this reason I would vote no.

Mr. BARTO—I am paired off with Mr. C. E. Parker, of Tioga county. I ask that I may be excused from voting.

Mr. JARVIS—I ask that I may be excused from voting; I am paired off with Mr. L. W. Russell.

Mr. MASTEN—I also ask to be excused from voting, having agreed to pair off with Judge Ketcham, who is now absent.

Mr. E. A. BROWN—I would suggest that this system of pairing off on this question will have no particular effect one way or the other. I would suggest that the gentleman from Erie [Mr. Masten] and the gentleman with whom he pairs vote the same way. That is a kind of pairing I do not understand.

Mr. MASTEN—I would inquire of the gentleman how he knows that fact, Judge Ketcham not having been here to discuss the question himself?

The PRESIDENT—The Chair rules the question is irrelevant in the order of business.

The SECRETARY proceeded with the call on the amendment of Mr. Murphy, and it was declared lost by the following vote:

*Ayes*—Messrs. Barnard, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Church, Cochran, Colahan, Comstock, Conger, Corning, Garvin, Hardenburgh, Hatch, Hitchman, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Mattice, Monell, More, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, Robertson, Rogers, Rolfe, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Tappen, S. Townsend, Tucker, Veeder, Verplanck, Wickham, Young—48.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hadley, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Laudon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, Pond, President,

Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Weed, Williams—94.

Mr. CONGER—As I understand, sir, all amendments that were offered in the Committee of the Whole to the first section, ought to be offered now. I, therefore, move that the Secretary present the first of the series of propositions I submitted in the committee as an amendment to the first section.

Mr. MURPHY—I would ask the gentleman from Rockland [Mr. Conger] to withdraw his motion for the present.

Mr. CONGER—Certainly.

Mr. MURPHY—I propose now to amend this section by inserting the word "white" after the word "every" in line 1.

Mr. S. TOWNSEND—I suppose now that under the ruling of the gentleman from Ontario [Mr. Folger] and the President, that I may now be permitted to occupy my limited five minutes (if I can hold out as long) upon this new amendment. I had supposed myself in order before, as several of the gentlemen who had then preceded me had merely risen for temporary inquiries.

The PRESIDENT—The gentleman is now entirely in order.

Mr. S. TOWNSEND—To resume then, sir, what I was interrupted in saying. I have listened, Mr. President, attentively to the prolonged debate upon the suffrage question in the Convention, and the Committee of the Whole, without noticing that a very important consideration that will in part influence my vote in favor of the amendment just proposed by my friend from Kings [Mr. Murphy] restraining an indiscriminate colored vote, has been brought before the Convention. Whatever inducements existed with our predecessors in 1777, 1801, 1821 and 1846 in recognizing a distinction as to this class of electors, have been many times manifolded by recent events in a portion of our country, that have placed in the views of many gentlemen upon this floor, a body of four millions of mainly illiterate, and in relation to all matters that concern the relation of voters in their enlightened knowledge of their duties to government, an ignorant people, on the same platform, after a years' residence, with the existing 800,000 voters in this State. My knowledge of this class of our population is drawn from more direct experience than perhaps any of those whom I am now addressing. If gentlemen will refer to that township of this State (which represents my post-office address) they will observe that we have among us as large a proportion as ten per cent of this colored element, indeed in my own school-district the proportion is even still greater. From such an opportunity of observation, although I recognize many of their estimable characteristics, I think that it is the duty of this body to interpose some barrier to the inroad, after a brief residence, of a mass of their still ruder brethren from the race that now people the disorganized plantations of our southern country, who, under some unscrupulous military leader, or at least his covert influence, shall neutralize your vote, Mr. President, or mine, and at the next election for our chief magistrate may, in our ex-



tended State, even—where a change of a few thousand votes would at this time reverse the political character of the State—then control the features of its electoral vote.

Mr. MURPHY — With the permission of the gentleman I will withdraw the amendment.

Mr. ENDRESS—I move to strike out the whole of the first proviso in reference to electors in the actual military service of the United States. Gentlemen will see that it is provided for in the third section, in the last five lines. Upon reading, you will see it more carefully expressed in section third than in section one. It is more carefully expressed in this respect. Gentlemen will perceive that it provides for the absence of persons in the service of the State and of the United States, though not out of the State. During the year 1864 this occurred in many instances; several hundred voters were at Elmira, not out of the State, not in the service of the United States, and in and about the bay of New York. There is another reason why it had better be in section three; it more properly belongs there as relating to the subject of residence. It will simplify section one very much. I move, therefore, to strike it out.

Mr. RUMSEY—I apprehend the gentleman has not considered the effect of the amendment he proposes to make. What he proposes to strike out is a constitutional provision for the preservation of the right of those who are absent from the State to vote. He proposes to simplify the provision which requires the Legislature to make laws to provide for the right of suffrage for the soldiers who have left the State, while he strikes out the only right they have to vote when away from home in service, for it will be observed that the section will stand, if this proviso is stricken out, with the declaration that voters shall vote where they reside and not elsewhere.

Mr. GREELEY—I desire to say a word. The committee has very carefully considered this matter and have fixed section three as this bill stands, so we believe it answers every purpose; there may be twenty thousand people called away from their homes before election and they cannot vote at all under the proviso of the first section, but they can vote under the way we have fixed it. The Legislature provides for taking their votes when absent from their homes; they may be defending the coast or may be defending the northern frontier. This proviso does not give them the right to vote; but this proviso under section three does give those citizens who are constrained to stay away from their homes, defending their country, the privilege of voting.

The question was then put on the motion of Mr. Endress, and it was declared carried.

Mr. BURRILL—I beg leave to offer the following amendment, substantially the same as that which I offered in the Committee of the Whole. Add at the end of line 10:

"But no man of color other than those who have the qualifications required under the Constitution of 1846, and those who may be born in the State, shall be entitled to vote under the provision hereof."

I wish to say, in reply to the remarks of the gentleman from Seneca [Mr. Hadley], with refer-

ence to the amendment I introduced yesterday to prevent migration in this State, and giving them the right of the franchise before it shall be determined by actual experience that they can exercise that right. I ask for the ayes and noes on my amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. MASTEN—I desire to be excused from voting for the reason which I assigned before, and I desire simply to say one word. I inadvertently voted before, forgetting my arrangement with Judge Ketcham. The reason of my voting was because I am opposed to this property qualification, and I shall, sir, here and elsewhere, vote against that proposition, whether it be boldly put forth or covertly concealed.

Mr. STRATTON—I ask to be excused from voting for the reason assigned before. Had it not been for that, I should have voted no.

The question was then put on the amendment of Mr. Burrill, and it was declared lost by the following vote:

*Ayes*—Messrs. Barnard, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Church, Cochran, Colahan, Comstock, Conger, Corning, Garvin, Hardenburgh, Hitchman, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowroy, Mattice, Monell, More, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, Robertson, Rogers, Rolfe, A. D. Russell, Schell, Schoonmaker, Seymour, Tappen, S. Townsend, Tucker, Veeder, Verplanck, Wickham, Young—46.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Attell, Baker, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Weed, Williams—96.

Mr. KERNAN moved to amend the section by striking out the word "thirty," in line 2 and inserting in lieu thereof the word "ten."

Mr. KERNAN—This amendment will leave the proposed Constitution as to this subject precisely as the Constitution of the State has been for the past twenty years, and is now. I listened to the discussion in the Committee of the Whole on this question, and no good reason to my mind was given why we should require a man to be a voter to be a citizen longer than ten days. It seems to me that this answers all that is required to prevent the alleged struggling for naturalization immediately preceding the election. Every man must be naturalized at least ten days before the election. I think this is long enough; naturalization has been administered under the present Con-



stitution; all have become accustomed to it; I have neither seen, nor have I heard that the length of time required before the election was not, for all practical purposes, long enough. Persons have declared their intention to be naturalized with reference to this provision, and I trust that we will adhere to the present Constitution in this respect.

Mr. SCHUMAKER—I hope that the amendment of the gentleman from Oncida [Mr. Kernan] will prevail. As one of the Committee on Suffrage I voted, in connection with my associate, Mr. Cassidy, in favor of retaining this ten day clause. I would say, Mr. President, that there is no necessity even for that. In the Constitution of 1777 and the Constitution of 1821 no such clause appears. It is a blot upon the Constitution of the State of New York, and a direct stab at the adopted citizens of the State. It is suspending the functions of a citizen for ten days after he has acquired the rights of a citizen. You might as well say you will suspend the young man who has arrived at the age of twenty-one years ten days before he shall exercise the privilege of a citizen. And furthermore, no State in these United States has such an obnoxious clause in any of their Constitutions; there is no State but the Empire State among the whole number that has this blot in its Constitution, which suspends the right of a citizen after it has been honestly and fairly acquired by a residence here of five years. Mr. President, there is no reason, placing, as we do, the black man on an equality with the white man, why we should suspend the functions of this class of adopted citizens for any length of time. The chairman of the Committee on Suffrage in his report says, that it will prevent the raking up of unwilling and ignorant foreigners—reluctant foreigners. If the last day is thirty days previous to election, there will be just as much raking up as if the last day was ten days before election. We have seen that in our cities, and we will see it if we make it six months before the election. I was very much surprised when I heard my friend from Richmond [Mr. Curtis] extol the black man and the women, that he did not say one word in relation to this element in society—the adopted citizens of this country.

Mr. CURTIS—I would ask the gentleman whether the white men and women coming to this country are not already provided for in that respect?

Mr. SCHUMAKER—I would answer the gentleman and say that I do not think he apprehends what I meant. I mean to say, when he so eloquently extolled the rights of the women and the bravery of the black man, and said that he should be considered equal with the white man, that he did not say a word in relation to the adopted citizens in this country, whose functions this Convention are attempting to suspend for the term of thirty days. I would ask whether the adopted citizens in this country have not "marched abreast," as Mr. Greeley terms it, with the native white man and the native black man, in all the great wars of this country, from the time of the *revolution down to the war to suppress the rebel-*

*lion*; whether he did not stand with the black man at Fort Wagner and Milliken's Bend, and whether they were not with the brave Butler [laughter] before Petersburg and Big Bethel [ahem], fighting just as bravely, to say the least of them, as the black man and native white man, and why should this thrust be made at the adopted citizens. I expected to hear some argument from the eloquent gentlemen, in favor of not suspending the right of any particular class of citizens, white or black, in this particular. I say, Mr. President, that it is not in any Constitution of any State this malignant stab at the adopted citizens and it ought not to be, both on account of their bravery and their industry—for all our great improvements have been made by foreigners. The name of Clinton would never have been immortal if it had been left to the native white and native black men to dig the Erie canal; there would not have been water enough brought from Lake Erie to the Hudson river for a man to swim in.

Mr. GREELEY—Mr. President—I call time. The gentleman's time is up.

The PRESIDENT—The gentleman's time is not yet up.

Mr. SCHUMAKER—I am much obliged to the gentleman from Westchester [Mr. Greeley], who so much amused me in the committee and in the Convention by his frequent discussions on this report, for calling time. But he is not time-keeper in this battle, and, from his liberal, whole-souled nature, I am surprised that he should so quickly call time on me, more especially as I have taken no part in this gasconade up to this time, and when I would not have said one word but for this unfair, illiberal and unenlightened clause against the adopted citizen. Mr. President, this clause is in direct conflict with the naturalization laws of this country. We all know that five years is long enough for a man to understand the Constitution and the laws of this country, if he desires, and if he cannot do it in five years he never can. Under this clause, if a foreigner arrives in this country within thirty days before an annual election, he has to reside over six years before he can vote, he has to pass over six annual elections and cannot vote until the seventh annual election after his arrival in this country.

Here the gavel fell, the five minutes having expired.

Mr. GREELEY—No person is disfranchised by this proposition, naturalized or native, nor are those who have given notice that they propose to become citizens. As the clause stands in this article, with the proviso which has just now been retained, every person who has even given notice of his intention to become a citizen is protected. We require a man who comes here from Virginia, Ohio, Massachusetts, or any other State, to be a citizen of our State one year before he can exercise the franchise. We do not mean this to be invidious; we do not mean to disfranchise them; but we say that a little time is necessary. The principle is covered precisely by the Constitution of 1846, which first made the discrimination. The Convention of that year wisely considered the matter, and decided that it was not best to have voters naturalized

while an election is going forward in order to carry that election; and they placed the time at ten days. Every man must be aware how the excitement of a contested election swells and swells as you approach the day of trial; how men are scrambled after, ran after, sent for, dug up, and hunted out from every quarter. We wish to have immigrants deliberately choose to become citizens—as many as will; but not, as they now are, hunted up by naturalization committees, who have packages of naturalization papers already made out to put the men through with, and who have agents in courts prepared to crowd them through by scores. Let us have time. We want six days on the registry before voting, and I think thirty days' citizenship short time enough. Let them be citizens thirty days before they vote. A learned judge said here that they stopped naturalizing in his court ten days before election. I do not see what right they have to do that. I think persons eligible to citizenship have a right to be naturalized at any time. It seems to imply that the object of naturalization is simply to vote, and I do not wish men naturalized for that express purpose; I would have men naturalized because they choose to become citizens and to assume all the responsibilities and discharge all the duties of citizens, the right of voting included.

Mr. CORBETT—There seems to be some doubt about the paternity of this amendment. I supposed that the gentleman from Cayuga [Mr. C. C. Dwight] had control of the original amendment, and yet the gentleman from Ontario [Mr. Folger] has accepted the amendment offered by the gentleman from Onondaga [Mr. Andrews], requiring thirty days' citizenship to precede the exercise of the elective franchise. There is a class of men in this Convention who have assumed during the discussion of this subject, that all the ignorance, and all the wickedness in this country have come from the other side of the Atlantic, and that the whole purport of legislation is to guard against this element and prevent its being mischievous. The chairman of the Committee on Suffrage spoke yesterday about the wholesale manufacture of voters. For my part, sir, I am willing to throw all the dignity possible around the ceremony of making a man a citizen. And yet I have no faith in the subterfuges that are here introduced for the purpose of purifying the franchise in that direction. There are men from Europe landing on our shores every day, who understand our system of government, and are as well informed in regard to the politics of the United States, as men who are living here, and I would as soon trust a man who learned democracy from the O'Donoghue, as I would a man who learned democracy from Jefferson Davis. I am in favor, then, of the amendment offered by the gentleman from Oneida [Mr. Kernan] inserting ten days instead of thirty, and of leaving the clause as it stands in the existing Constitution.

Mr. KERNAN called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The Clerk proceeded to call the roll, and on Mr. E. A. Brown's name being called—

Mr. E. A. BROWN—I ask to be excused from

voting, and desire to say that in view of the enlarged and patriotic views expressed by the honorable gentleman from New York [Mr. Gross] on Friday, I came to the conclusion it would be right and proper to retain the Constitution as it is now. I withdraw my request to be excused and vote aye.

On Mr. Ludington's name being called—

Mr. LUDINGTON—I wish to say in giving my vote, that I am not aware of any existing abuse in the present Constitution in that respect, and, therefore, I vote aye.

On Mr. Roy's name being called—

Mr. ROY—I wish to state in explanation of my not voting, that I have paired off with Mr. Hale.

The Clerk proceeded with the call, and the amendment was declared carried by the following vote:

*Ayes*—Messrs. Alvord, Armstrong, Axtell, Baker, Barnard, Barto, Beals, Beckwith, Bergen, Bickferd, Bowen, E. Brooks, E. A. Brown, Burrell, Carpenter, Cassidy, Champlain, Cheritree, Chesebro, Church, Clinton, Cochran, Colahan, Comstock, Conger, Cooke, Corbett, Corning, Curtis, C. C. Dwight, Ely, Evarts, Folger, Fuller, Fullerton, Garvin, Gross, Hadley, Hardenburgh, Harris, Hitchman, Huntington, Jarvis, Kernan, Kinney, Landon, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Ludington, Masten, Mattice, Monell, More, Morris Murphy, Nelson, Opdyke, Paige, A. J. Parker, Potter, Reynolds, Robertson, Rogers, Rolfe, Roy, A. D. Russell, Schell Schoonmaker, Schumaker, Seymour, Silvester, Sheldon, Spencer, Stratton, Tappen, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Weed, Wickham, Young—87.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Archer, Ballard, Barker, Beadle, Bell, E. P. Brooks, W. C. Brown, Case, Clark, Duganne, T. W. Dwight, Eddy, Endress, Farnum, Ferry, Field, Flagler, Fowler, Francis, Frank, Goodrich, Gould, Grant, Graves, Greeley, Hammond, Hand, Hiscock, Hitchcock, Houston, Hutchins, Krum, Lapham, A. Lawrence, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Merwin, Miller, Pond, President, Prindle, Prosser, Rathbun, Root, Rumsey, Seaver, Sherman, Smith, M. I. Townsend, Van Cott, Wakeman, Wales, Williams—60.

Mr. VAN CAMPEN—I move to strike out in the fourth line the word "four" and insert the word "two," so that it will read "two months" instead of "four months." I know of no good reason why the term of four months in the county should still be required for an elector in this State, and who has a clear State residence of a year. I, for myself, would be satisfied with a less time than two months, but I make that proposition as a compromise between those who desire to reduce it to thirty days and those who are in favor of four months. Upon the discussion of this question last evening the gentleman from Cayuga [Mr. C. C. Dwight] said that one of the reasons for retaining the four months was that if a gentleman was moving from one part of the State to another it became necessary for him to become acquainted with the institutions of the county. I ask if the institutions of the counties are not all the same in the State;

there is but one system in every county. I know of but one reason to make it necessary, and that is to become acquainted with the candidate, and that every gentleman can see is a matter which can be very easily overcome. Any gentleman can become acquainted with the character of the candidate presented for his suffrage in two months' time, and so far as the question of settling, as to his residence in any particular place in the State, in one county or another, two months' time is entirely sufficient.

Mr. KINNEY—I move to amend the amendment as follows:

Strike out all after the word "election" in line three, down to and including the word "county" in line four, and inserting in lieu thereof the words "and for the last thirty days a resident of the election district."

The question was put on the amendment of Mr. Kinney, and was declared lost.

Mr. MERRILL—There is one simple, sufficient reason, Mr. President, why I hesitate to favor the proposition of the gentleman from Cattaraugus [Mr. Van Campen], although it seems to me reasonable enough, *per se*, and that is a reason which I have heard repeated, during this discussion, with what the great dramatist calls "damnable iteration." This reason, sir, is that "our fathers" fixed upon this period of four months, the "Convention of 1846," which the gentleman from Columbia [Mr. Silvester] had the hardihood to decline to follow the other day, selected this term of county residence. It has stood for twenty years—a full score, and more, Mr. President. It has "received judicial construction." Think of that! The high legal tribunals have so "construed" the existing section that one could at any time, by merely consulting a lawyer or the reports, learn precisely how long a period of time four months is, and various other items of equally valuable information! [Laughter.] The value to the citizen of this "construction" of an article that should be about the simplest and clearest provision of the fundamental law, I will not attempt to estimate. But in view of all this, sir—standing in my place with twenty years looking down upon me, with fragrant memories of the Convention of 1846 constantly wafted under my nose—I shrink from disturbing this embalmed four months' requirement. [Laughter.] With my eyes turned conservatively backward, I ask if all the honest industry of delegates and judges and counselors, shall now be made of no avail? Bearing in my breast, sir, such respect for the traditions and the precedents of the past, I should almost expect that my sacrilegious tongue would cleave to the roof of my mouth, and my vandal right hand forget its cunning, if I dared thus to disturb this ancient instrument, to which we were sent here, at a thousand dollars per day, to pay homage. [Laughter.] Sir, I trust gentlemen will pause, will reflect, will at least view things from this stand-point, before they perpetrate such an unconscionable innovation.

Mr. M. H. LAWRENCE—I hope the amendment of the gentleman from Cattaraugus, [Mr. Van Campen] will prevail. There are a large class of the ministers of the gospel in the western part of the State that have to make a change in their

residence along in the month of September, who are patriotic men, and will thereby lose their votes. I think they will be favorably affected by this amendment. There are large classes of that description, and I trust the Convention will take their wants into consideration by adopting this amendment.

The question was then put on the amendment of Mr. Van Campen, and was declared lost by the following vote:

**Ayes**—Messrs. Axtell, Barto, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, Burrill, Cassidy, Champlain, Chesebro, Church, Colahan, Comstock, Conger, Cooke, Corning, Eddy, Endress, Ferry, Flagler, Frank, Garvin, Goodrich, Greeley, Gross, Hadley, Hammond, Hardenburgh, Hitchman, Hutchins, Jarvis, Kinney, Krum, Landon, Larremore, Law, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Magee, Masten, Mattice, McDonald, Merrill, Miller, Monell, More, Morris, Murphy, Nelson, Opdyke, A. J. Parker, Potter, Prosser, Robertson, Rogers, Roy, Schell, Schumaker, Seymour, Sheldon, Smith, Stratton, Tappen, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wakeman, Weed, Young—74.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Baker, Ballard, Barker, Barnard, Beadle, Beals, Beckwith, Bell, Bergen, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Cochran, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ely, Evarts, Farnum, Field, Folger, Fowler, Francis, Fuller, Fullerton, Gould, Grant, Graves, Hand, Harris, Hiscock, Hitchcock, Houston, Huntington, Kernan, Lapham, A. Lawrence, Lee, Lowrey, Ludington, Merritt, Merwin, Paige, Pond, President, Prindle, Rathbun, Reynolds, Rolfe, Root, Rumsey, A. D. Russell, Schoonmaker, Seaver, Silvester, Sherman, Spencer, M. I. Townsend, Van Cott, Wales, Wickham, Williams—74.

Mr. ANDREWS—I move the following amendment:

Strike out the word "provided" in line 11 and all after the word "also" in line 18.

Mr. VAN CAMPEN—I move a reconsideration of the vote which has been taken.

Objections being made, the motion was laid on the table under the rule.

Mr. LAPHAM—I offer the following amendment:

Strike out all after the word "resident" in line 9, to and including the word "whom" in line 10, and inserting in lieu thereof the words "of the election in which," so that it will read "a resident of the election district in which he offers his vote."

Mr. LAPHAM—I offer this amendment for the reason that from my own knowledge and experience, under the words now embraced, which are the same as the present Constitution, a difficulty often arises in determining for what portion of the officers to be chosen an elector may vote. I desire by this amendment to accomplish the result, to have the elector vote for every officer to be chosen by the people, when his right to vote in the election district exists, and to make the qualification of thirty days' residence universal in applicability to the right to vote for all officers.

Mr. WAKEMAN—I would like to inquire



whether that has reference to the election district where there are more than two districts in the town—the election district referred to, whether for the particular district in which the voter offers his vote.

Mr. LAPHAM—He shall be a resident of the district in which he offers his vote.

Mr. WAKEMAN—That will work a hardship in some of the towns of this State. In my own town we have three or four election districts, and often men change their residence from one side of the street to the other within thirty days. It seems to me that would be a hardship to apply to the election district, in case a man moves across the street. In my town one part of the electors vote on one side of the hall, and the other portion on the other side, and they often change their residence from one side of the road to the other within thirty days.

Mr. KERNAN—At present, as it stands now, it prevents any attempt of affecting the election by changing the residence, because a man must be thirty days in the district in which the officer for which he votes is to be elected; but he must reside in an election district thirty days to vote at all; but if he must reside in an election district for thirty days to vote at all, all of which is in one assembly district, or any other official district, a man who changes his residence across the street (as a street very often divides an election district), loses the right to vote at all. I can see no good in the amendment. I think it will often lead to hardship, and will unnecessarily deprive a man of his vote, and I hope it will not be adopted.

Mr. GREELEY—This is a blow at the "repeaters," and I hope it will be struck home—the fellows who vote six, or eight, or ten times at an election. If they are compelled to live thirty days in an election district, the people will be very likely to know who they are. I protest against any facilities being granted to the men who take contracts to give ten or a dozen votes in any election district, and I trust this amendment will prevail. While it prevents one honest voter from voting, it will keep out half-a-dozen fraudulent votes. Men will calculate and say, "I cannot move across the street, because the election is coming on, and I must stay here." It is perfectly easy for men to keep thirty days in one district, and I trust we will advise them to do so by letting this motion now prevail.

Mr. ROBERTSON—I propose to amend the amendment as follows: "Strike out the words 'election district,' and insert the words 'town or ward.'"

The question was put on the amendment of Mr. Robertson, and was declared lost.

Mr. PRINDLE—I wish to propose an amendment of ten days instead of thirty.

The question was put on the amendment of Mr. Prindle, and was declared lost.

Mr. LAPHAM—If the Convention will pardon me, I would like to make a single suggestion.

Mr. FOLGER—I rise to a point of order, that the gentleman has already spoken.

The PRESIDENT—The point of order is well taken.

Mr. McDONALD—I offer the following amendment:

Strike out the word "and" in third line, and after the words "of the county" in fourth line, insert "and for the last ten days a resident of the election district."

Mr. McDONALD—With regard to that amendment I have but one remark to make, and that is this: you have made several requirements for the voter. You require him to be one year in the State, and you require him to be in the county four months, and you have required him to be a naturalized citizen for ten days. What I ask is, that you give some time in which you can enforce the law. How are we to determine whether men are voters? It is not a pleasant thing to challenge a man at the polls when you do not know anything about him. You ought to give us some time in which we can determine whether he is a voter or not.

Mr. HARDENBURGH—Under your registry law he cannot vote in the election district unless he is registered.

Mr. McDONALD—I ask this with regard to the registry law. Suppose a man comes from another part of the county, he is not registered until the last day, and we do not know anything about him, he comes into the election district on the morning of the election, and he is registered the day before and votes as often as he has a mind to. You thus have no chance to tell whether he is a voter or not. If you make the law, give the people a chance to enforce it.

Mr. ALVORD—I rise to a point of order, that the Convention has passed upon the same proposition in the amendment of the gentleman from Onondaga [Mr. Andrews].

Mr. McDONALD—I will call the attention of the President to the fact that this amendment does not propose to strike out anything; it proposes simply another limitation. The Convention will see it is different from the amendment that has been offered.

Mr. ALVORD—I insist on my point of order.

The PRESIDENT—The point of order is well taken.

Mr. C. C. DWIGHT—I rise to a point of order, that the proposition of the gentleman from Ontario [Mr. Lapham] was distinctly disposed of by the vote upon the amendment of the gentleman from Chenango [Mr. Prindle].

Mr. GREELEY—The proposition is not the same. It was then to limit to thirty days every man in the district, but this is to require him to be four months in the county, and also thirty days in the district.

The PRESIDENT—The Chair understands the proposition to be a different one.

Mr. W. C. BROWN—If it is in order, I will move to amend the amendment offered by the gentleman from Ontario [Mr. Lapham] by substituting therefor the following: After the words "resident of the" in line 8, insert the words "town or ward, and for ten days of the election district in which he offers his vote."

Mr. LAPHAM—I accept that amendment.

Mr. HARDENBURGH—It is now debatable.

The PRESIDENT—The amendment is debatable, within the rule.

Mr. HARDENBURGH—I am opposed to this amendment. First, I am opposed to any amend-



ment of this kind here, when we are about finally to pass upon this thing, placing in our Constitution an article of this importance, when it is limited to a five minutes' debate and has been thoroughly discussed in Committee of the Whole, and when I know many of the gentlemen present are not thoroughly acquainted with the effect that such an amendment now incorporated into this section of the article will have. All the guards that are necessary to protect colonization of voters is in that thirty days that they are to reside in the district in which the officer, for whom they cast their votes resides, or where he resides. That is, he is to be thirty days in the district in which the officer resides, or from which the officer is a representative. Now, in my town, where we have five election districts in a little town, and probably twenty-five election districts in the assembly district, for which we perhaps have to send an officer or an Assemblyman to Albany, and they are divided, as the gentleman from Onondaga [Mr. Kernan] says, by streets. Now, then, a man moves across the street the day before election, into another election district. If he has not resided thirty days in the district in which he offers his vote, and which was, in the old Constitution, thirty days next preceding the election, a resident of the district from which the officer comes, he cannot vote under that restriction, and I can see no earthly reason for it, and you can scarcely conceive what an amount of injury will result from putting this in. It is no necessary guard, for you have it in the thirty days, and I am entirely opposed to it. If gentlemen will adopt, on a five minutes' discussion, this amendment; when you come, hereafter, to look at your article, you will find something that you will not be pleased with.

Mr. YOUNG—I said yesterday in this Convention, in regard to the election of supervisors, the town in which I reside, like most other towns in that part of the State, is divided into four or more election districts. The election for supervisors, and other town officers, occurs in the Spring, in most of these towns, shortly after moving time. Now, I ask any gentleman here to give me any reason why, if an elector moves from one election district across the street into another, he should be prohibited from voting for a supervisor of that town. I ask if there can be any fraud in permitting an elector from moving from one side of the street to the other, from one election district to the other in the same town, to vote for a supervisor or town officer of that town.

Mr. LAPHAM—I would ask whether in a town election the town is not the district in which the person votes.

Mr. YOUNG—That is a question which occurred to me. I think the phraseology of the amendment means election districts, and towns are made up of a number of election districts, and I fail to see any reason why a man that has spent his whole life in one town, is not competent to vote for any officer in that town; whether he lives in one election district or another election district of that town.

Mr. VEEDER—As I understand the amendment now proposed, it requires a residence of

thirty days in a town or ward, and a residence of ten days in an election district. I am in favor of this proposition. In reply to the gentleman, in regard to the election of town officers at the spring election, I desire to state that the gentleman is very well aware that at those town meetings the whole of the electors of the town vote without regard to their residence in any particular election district. That is the way I regard it. Now, in regard to the proposition requiring a residence in an election district for thirty days to enable an elector to vote for any officer, I submit it is a hardship, for this reason. In our large cities many tenements are occupied, under agreements, from month to month, and it very often occurs that the landlords are enabled to secure an advanced rent, consequently they notify their tenants that their tenancy will expire in thirty days thereafter. This often may occur, and the tenants are obliged to leave the tenancy they occupy and move to some other election district. This change of residence is not of their own selection but is necessitated by the action of their landlord. Thus they would be compelled to lose their vote for every officer that may be upon the ticket. I shall oppose the original proposition. But if it be amended so as to require a residence for not more than ten days in the election district, I shall favor the amendment, yet I feel that ten days is even long enough a residence in the town or ward to entitle an elector to cast his vote for all officers.

Mr. LOEW—I move to amend the amendment as follows:

Strike out the words "town or ward," and insert in lieu thereof the words "town, ward or city."

Mr. LOEW—I really do not see why a party should not be entitled to vote if he moves out of the ward—why he should not be entitled to vote for supervisor or mayor that runs throughout the whole city.

The question was then put on the amendment of Mr. Loew, and it was declared lost.

The question was then put upon the amendment of Mr. Lapham as amended, and it was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Andrews, Archer, Armstrong, Axtell, Barker, Barnard, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Cooke, Corbett, Curtis, Duganne, T. W. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Field, Flagler, Folger, Francis, Frank, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hadley, Hammond, Hand, Harris, Hiscock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Lowrey, Ludington, McDonald, Merrill, Meritt, Merwin, Miller, Murphy, Opdyke, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, Schoonmaker, Schumaker, Silvester, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Veeder, Wakeman, Wales, Williams—94.

*Noes*—Messrs. Alvord, Ballard, Barto, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Church, Cochran, Comstock, Congor, Corning, C.

C. Dwight, Evarts, Fowler, Fullerton, Garvin, Hardenburgh, Hatch, Hitchcock, Hitchman, Jarvis, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Loew, Magee, Masten, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Potter, Robertson, Roy, A. D. Russell, Schell, Seaver, Seymour, Tappen, S. Townsend, Tucker, Verplanck, Weed, Wickham, Young—52.

Mr. CURTIS—I offer the following amendment:

In the first line strike out the word "male," and wherever in the section the word "he" occurs, add "or she;" and wherever the word "his" occurs, add the words "or her."

Mr. CURTIS—On this, sir, I ask the ayes and noes.

Mr. GRAVES—Are amendments in order?

The PRESIDENT—Amendments are in order.

Mr. GRAVES—I offer the following amendment:

"And all women of lawful age of like citizenship may vote for the same officers, if at an election to be held on the first Tuesday in June, 1868, at which women alone over the age of twenty-one years shall vote, a majority of all the votes given shall be in favor of exercising the elective franchise."

Mr. HAND—Can that be admitted under the rule?

The PRESIDENT—The Chair sees no objection to it.

Mr. BICKFORD—I rise to a point of order, that that is a resolution which requires a separate submission.

The PRESIDENT—The Chair would inquire of the gentleman from Herkimer [Mr. Graves] whether this is the same proposition which was ruled out yesterday, in Committee of the Whole.

Mr. GRAVES—It is.

The PRESIDENT—I would say, with all due deference to the opinion of the chairman of the committee, that I understand this to be a proposition to be inserted in the body of the Constitution, and it will be wholly inoperative unless, after the adoption of the Constitution, an election shall be had and a vote taken, as provided by this. I think it is in no case a separate submission.

Mr. GRAVES—I ask the ayes and noes on that proposition.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. GREELEY—I have not been allowed a hearing in this case. I desire to say a word. The Committee on Suffrage considered this whole matter deliberately, and decided to enfranchise black men, and not to enfranchise women, *because black men want to be enfranchised and women do not*. If any man doubts this, let him ask the next twenty black men he meets and the next twenty women, indifferently, and he will be assured of its truth. I object to this proposition, because it compels women to vote in order to avoid voting. I am willing the question of black suffrage should be submitted to black men, and let all that do not vote count in the negative; and so in regard to women. I am in favor of such a submission. Let the women who do not choose to vote abstain from voting, and, by abstaining, affirm their desire not to have the right of suffrage extended to

them. I believe in the principle that "governments derive their just powers from the consent of the governed;" and whenever the women of this State shall say that they desire the right to vote, I am in favor of conceding it. I do not believe it will be wise in them so to indicate; I do not believe that one-tenth of our women desire to exercise the right of suffrage; and I think all these propositions inapplicable to the existing state of facts. Whenever the women shall choose to exert a decided influence in politics—at I hope they may—I want them to act as women, not as persons. I wish the women of this State to be heard as women, and not to be mixed up with and commingled with men in caucuses, on nominating committees, and at the polls, but allowed to have their views heard as the women of the State. I would be very willing to commit to them all questions connected with the domestic relations—with marriage, separation, and divorce, and all questions touching the care of families, of inheritance, and of dower; but the proposition does not come before us in such shape as to commend itself to the women of the State; and, when they shall be heard, as I trust they may choose to be heard, let them be heard as women. If they are ever to exercise the elective franchise, let them meet as women, and elect delegates as women, and have Legislatures or Conventions to which only women shall be admitted, either as spectators or officers; and let them therein state their wishes in regard to the legislation of the State. I am sure they will be heard. I am very sure they will be heard as women; but this demand for a common right with men is the voice of a very few women; and the claim that they act for women I repudiate. The gentleman who offered the last proposition, asked how the Committee on Suffrage acted thereon. I have had no opportunity to answer him until now. When he made that proposition, the lady who leads this woman's rights movement, Mrs. Stanton, at once protested against it, and said she would have no appeal to women—would not allow women to vote on the question—but insisted on our adopting her proposition, pure and simple, that women should be treated as all men are treated. When the eloquent gentleman from Richmond [Mr. Curtis] spoke for women, he pointed to Queen Elizabeth as having been a great sovereign. Did Queen Elizabeth select a Cabinet, or did she call a Parliament, of men and women indiscriminately? I appeal to all the female rulers, from Semiramis to Victoria—to the Empress Catharine of Russia, to Maria Theresa of Austria. Not one of these great women has ever proposed the commingling of men and women in legislation or governments.

Mr. GRAVES—I have endeavored to speak at length upon this subject, and in presenting the amendment which I offered to-day, owing to the peculiar condition of this Convention I have not been able to present this amendment, so that it should meet with appropriate consideration. Yesterday, under the rule made by the Chair, I was prevented from discussing the question. Sir, it is the very question to which the gentleman objected who has just sat down, that I desire to call the attention of this Convention to. It is said

by many, that the women do not desire to vote, that it is only a few of what are called strong-minded women, that desire to exercise the elective franchise. I desire to submit the question to the women alone, to let them determine whether they do desire to exercise the elective franchise or not, and I desire to do it upon this amendment. I have never regarded the right to exercise the elective franchise as existing in men rather than women; I hold the right of one to vote just as old as the right of the other, and if at the organization of our government, our revolutionary mothers had desired to exercise the right of going to the ballot-box and voting, or of aiding in the enactment of any laws which were instituted for the purpose of re-organizing our government; there was no law, there was no code, civil or divine, which would have prevented the mothers from going to the ballot-box, or of assisting in framing the laws. But that right has been assumed by men, and quietly acquiesced in by the women. Women have permitted the men to make the laws and vote upon all important questions, and now I ask because the women in that peculiar condition of the country when the population was sparse, and when the country was poor and their wants small and easily satisfied, because they consented that men should exercise all the law-making powers and the elective franchise, and because they quietly acquiesced in that, is it any reason, in the present condition of our country, that they do not desire to exercise the elective franchise now. That is the question I desire to submit to them. They know that by the change in the condition of our country they have acquired a power and an influence to be felt, and their improved position in society is of such a character that it has become important for the perpetuity of our government, that their influence as citizens may be the means of sustaining a government that seems to be fading away under the immoral influences that surround it. It is quite important. Why is it, I ask, that the fathers to-day are educating their daughters, believing it is important to give the daughters just as good an education as the sons, for the ordinary duties of life? Does it disqualify a woman for the exercise of all the domestic relations, for all the kind, sympathetic properties of her nature, because she is educated equally now with the male sex? Does it render her less fit for all the domestic relations and agreeable duties that surround her? Certainly not. And because she is educated in all the substantial sciences so important to her as a woman, does it disqualify her for any of these social relations? Let the question be put to them. The gentleman says the women do not want to vote. He is mistaken. This has never been discussed between the women in sober earnestness; they never have examined the question for themselves. Their husbands and those who have desired to retain power and influence, have advised them that they do not desire to exercise this power, but let them examine it themselves, and you will find ninety-nine out of every hundred at the ballot-box voting either in favor of exercising the elective franchise or against it, and with that result certainly we ought to be satisfied.

**Mr. GOULD**—I think it must be very obvious

to the Convention that this proposition is exceedingly crude. What is a woman? Is a girl of eighteen years of age a woman? We have no law regulating what a woman is. We have no law regulating whether an Indian woman or a foreign woman who happens to be in the country, may vote or not. There is no legal provision here that surrounds this thing, and the amendment is so strong that if only ten women in the State vote upon the resolution that the gentleman has offered, and six of them vote in favor and the others against it, the thing is carried. The gentleman must see how exceedingly absurd would be the result which would follow from the adoption of his resolution. He says the subject has not been discussed among the women. It is a most extraordinary assertion. It has been discussed among them, and discussed for a long time, and the women of the State are opposed to this matter. When we see that the true womanhood of the State will not vote on the question at all, and when only the looser portions of the community will vote upon it, I think gentlemen must see that the whole proposition is fraught with mischief and danger. I hope that no gentleman here will be weak enough to vote upon a question of this kind, unless some very much greater safeguards are thrown around it.

The question was then put on the amendment of Mr. Graves, and it was declared lost by the following vote:

**Ayes**—Messrs. Barto, Beals, Eddy, Farnum, Fowler, Graves, Hammond, M. H. Lawrence, Seaver—9.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Barnard, Beadle, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Cassidy, Champlain, Cheritree, Chesebro, Church, Clark, Clinton, Cochran, Colahan, Comstock, Conger, Cooke, Corbett, Corning, Curtis, C. C. Dwight, T. W. Dwight, Ely, Endress, Evarts, Ferry, Field, Flagler, Folger, Francis, Frank, Fuller, Fullerton, Garvin, Goodrich, Gould, Grant, Greeley, Gross, Hadley, Hand, Harris, Hiscock, Hitchcock, Hitchman, Houston, Huntington, Hutchins, Jarvis, Kernan, Ketcham, Kinney, Krum, Landon, Lapham, Larremore, Law, A. Lawrence, A. R. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Magee, Masten, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Pond, President, Prindle, Rathbun, Reynolds, Robertson, Rogers, Rolfe, Root, Roy, Rumsey, A. D. Russell, Schoonmaker, Schumaker, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Campen, Van Cott, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham, Williams, Young—133.

**Mr. MORE**—I offer the following amendment, to be added to the amendment of Mr. Curtis. "This proviso shall not apply to women of color."

The question was put on the amendment of Mr. More, and it was declared to be lost.

**Mr. MERRITT**—A few days since I defined my position upon the question of female suffrage,



I then stated, that I now believe it inexpedient to make the change proposed by the Constitution which it is proposed to submit. I shall favor any proposition having in view a submission of the question to the electors, at such time in the future as will give full time for discussion before the people, when the decision shall not be embarrassed by other and different propositions. With my present views, I should at such election favor and vote for such an extension of the right of suffrage. But on the pending motion, to make the change in the article now before the Convention, I shall be constrained to vote against it.

Mr. CURTIS—The chairman of the committee, the honorable gentleman from Westchester [Mr. Greeley] says he has no evidence that the women of this State desire the franchise. I will point the honorable gentleman, and his friends in this Convention, who are so anxious to extend the franchise to a certain class of the population, that they have not in this Convention, at least, presented themselves by petition, whereas I have had the pleasure of presenting the petitions of more than one thousand persons of the adult population of this State, being women, who do desire the extension of this franchise. He also speaks of Queen Elizabeth: well, sir, Queen Elizabeth's will was the government of England; and at the most crucial moment of her life, when the question was whether she should marry the French Prince, after all her courtiers and admirers, Essex, Walsingham and all her great advisers had plead against the match, it was only by a letter from a gentleman not connected, as we may say, with her government at all, that her will was changed, and her will was the law of England. The proposition that is pending by my amendment is not to force a single woman in this State to do anything she does not wish to. It is simply to remove the disability from women to-day. Women to-day go into the auction room, women go into the stock exchange, and she may plead her own cause in court if she chooses, and all that I ask is that the disability which now rests upon her may be removed—a disability the scope of which was described by my friend from Richmond [Mr. Brooks], when he said that not to grant suffrage is a punishment, and to deprive fifty thousand Union deserters of the franchise was practically to banish them from the State; and I ask, not that one single woman, but that all the intelligent women who may wish to exercise the same right shall not be debarred. If no woman wishes to do that thing, why then women will refrain, and the whole force of the arguments which have been adduced against the proposition I had the honor to submit reduce themselves to two, namely, that it is inconsistent with the female sex, and that it will subvert the family. In regard to the functions of the sex, as I said the other afternoon, we deprive ourselves of knowing what its just limits are, so long as we assume arbitrarily to coerce it. In regard to the subversion of the family and her disregard of the functions and duties of her sex, nothing can be plainer than if a woman is not a woman by the instincts of her nature and by the natural laws of her sex, all the disabilities that may be heaped upon her by man will not keep her a woman. This chamber

has rung with the eloquence of gentlemen who have celebrated the charms, the delicacy, the softness, the superiority, the high and holy mission of women, and yet logically they all insist that women will not fulfill their high and holy mission; that woman will not remain a woman, but insist upon plunging into what is called the foul pool of politics, unless we insist upon continuing this political disability. Gentlemen, one after the other, have arisen here and made eloquent appeals in favor of the loveliness of woman, but have arrived at the most disastrous conclusion. I think it was Shenstone who described the polite debtor who showed his creditors down stairs so gracefully: "He kicked them down stairs with such a sweet grace, that you would think he was handing them out," and so here it has been with gentlemen who oppose this motion. They have pleaded the instincts of man. The instincts of man are pleaded against every amelioration of the laws that have oppressed woman. Those gentlemen who have frothed and foamed at the mouth with compliments to woman, let me remind those gentlemen, that the literature of England was the most lavish in its compliments to women at the time that the laws of England were brutal and disgraceful, by the confession of the law makers. Instinct, sir—instinct is the name under which every prejudice masks itself. Nobody knows better than my honorable friend from Westchester [Mr. Greeley], that the long time opposition to the right of the black men in this country has been what was called an instinct. Within a day or two, I have seen an illustration of that, almost in the precincts of this hall, which I believe prefigures the action, if not in this Convention, yet very soon in this State. I was coming from my residence on the north slope of the Capitol hill, and was passing what is called the reservoir around which is a high wall. Upon that wall were two little Irish children playing, and upon the sidewalk at its foot was a little black child of the same age. The two children upon the wall were elated with their position, and the little "image of God in ebony" as old Fuller has it, looked up with his smiling, merry face and said, "lift me up! lift me up!" Sir, these young Irishmen had not been manipulated by the politicians of this country; they had not been taught that there was an instinct which separates the white from the black, and one of them giving his hand to his fellow, reached down and took the hand of the little black child, and instantly he was by the side of the other children on the wall. The motto of the State is "Excelsior," and I see in these little children, who will one day become citizens, the inspiration of the great feeling that underlies that motto, and sir, I am disposed to go beyond my prophecy of the other day, and say that there are many of us living who will see the class, who are privileged in this State now, stoop down to raise every other class to the same height. I ask for the ayes and noes on this motion.

Mr. E. BROOKS—Sir, I am opposed to the amendment of my colleague [Mr. Curtis], and it is because, to use his own illustration, I desire to lift up the women of this State, that I oppose it. I do not believe that by the adoption of this amendment you will secure their moral, their



social, or in any way their personal elevation. There are 750,000 adult women in the State of New York, and it is proposed by one fell swoop or blow to intrust these 750,000 women with the grave privilege of the franchise. Sir, I have said once before during this discussion, that we live in a progressive age, and this is but another evidence of the fact. We live in a sort of transcendental age, when men are disposed to break up, disturb and overthrow all those landmarks of society upon which our government and society have rested since its formation. I am unwilling to make this innovation. I see in measures like these, and other measures which meet with more favor in this Convention, a disposition to disturb those solemn and sacred relations of society which have been our security during the past, and which are our only sure hope in the future. The 750,000 women, and that class of colored people to whom the franchise may soon be given, now number seven-twelfths of the entire population of the State of New York, and it is proposed to extend this franchise to this large class of people; not, sir, to secure any natural right, moral right or social right which now belongs to the female sex, but in order to cultivate, or rather to pander to that feeling of excitement and revolution incident to the age in which we live. Sir, this is a great age of unrest, for I can find no other word to express the idea I wish to convey to this Convention; an age in which society is disturbed and States disturbed, and in my judgment he is the best and truest statesman, and the best friend of mankind, who will do all in his power to restore the whole people to those social, political and solid relations under which this government of ours was formed. The ambition on the part of certain women, and of a very few women, propose this great change in our political and social life. Sir, there are in this Convention one hundred and sixty household gods, so to speak representing our homes and firesides. All these are represented by us in our respective heads of families. How many of these homes, how many of our wives and daughters and sisters desire to be intrusted with this right of franchise. In my judgment if you analyze this Convention not one-twentieth part of its members nor one-twentieth part of these 750,000 adult women in the State of New York, probably not twenty thousand, desire that the franchise shall be thus given; and even if it should be granted it would make such a revolution in the politics of this State, as would lead many who now desire to give the franchise to this class of people to repent of the act all the days of their lives. We have been agitating this question and kindred questions year after year, and what is the effect upon society? The gentleman from Columbia [Mr. Gould] stated what the effect was upon certain women of the State when he said there was twenty years ago in our county jails but one woman in twelve, whereas within the two years past upon an examination of the same State jails, there were four women out of every twelve persons. In the increase of crime, sir, if we will see the truth as it is, and speak the truth as it is, every man must admit that we are passing from bad to worse. But while we are talking of progress here, society

was never so much demoralized as it is during this, the year of our Lord, 1867, and it was never more demoralized in the old world, I am sorry to say, than in the new. Every man sees this in the great increase of crime, in the corruption of our public offices—

Here the gavel fell, the gentleman's time having expired.

The question was then put upon the amendment of Mr. Curtis, and declared lost by the following vote:

**Ayes**—Messrs. Beals, Bell, Corning, Curtis, Duganne, Farnum, Field, Folger, Fowler, Graves, Hadley, Hammond, Kinney, Lapham, M. H. Lawrence, Pond, Tucker, Veeder, Wales—19.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barnard, Beadle, Beckwith, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Cassidy, Champlain, Cheritree, Chesebro, Church, Clark, Clinton, Cochran, Colahan, Comstock, Conger, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evarts, Ferry, Flagler, Francis, Frank, Fuller, Fullerton, Garvin, Goodrich, Gould, Grant, Greeley, Gross, Hand, Harris, Hatch, Hiscock, Hitchcock, Hitchman, Houston, Huntington, Hutchins, Jarvis, Kernan, Krum, Landon, Larremore, Law, A. Lawrence, A. R. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Magee, Masten, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Potter, President, Prindle, Prosser, Rathbur, Reynolds, Robertson, Rogers, Rolfe, Root, Roy, Rumsey, A. D. Russell, Schell, Schoonmaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Verplanck, Wakeman, Weed, Wickham, Williams—125.

**Mr. MORRIS**—I move that the Convention take a recess until four o'clock.

The question was put on the motion of Mr. Morris, and declared carried.

So the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock and resumed the consideration of the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, as reported from the Committee of the Whole.

**Mr. BICKFORD**—I move to strike out of the first line of section one the words "twenty-one," and insert in lieu thereof the word "eighteen." The object of the amendment is, of course, to grant to all persons of the age of eighteen years the right to vote on the same terms as others; in other words, to alter the age at which men shall become entitled to exercise the elective franchise from twenty-one to eighteen. It differs very materially from the amendment which I offered in Committee of the Whole, which included only those persons born in this State, and who also had always resided in this State, who had attained the age of eighteen years. I will not repeat the arguments I advanced yesterday in favor of allowing that

extent Justice Curtis (who dissented from the judgment of the court) concurred that a colored man was not, within the meaning of the Constitution, a citizen of the United States. And, sir, as I understand the law to be, it is entirely well settled that, although the State surrendered to the general government the power over naturalization so that aliens naturalized pursuant to the law of Congress become citizens of the United States, that nevertheless, as to all other classes of persons, those were citizens of the United States only who were citizens of any individual State, and that the test by which you are to determine who are citizens of the United States in the present state of judicial authority is to determine who are citizens of a State. Now, as showing that the gentleman upon the other side [Mr. T. W. Dwight] is mistaken when he claimed that it was held by the Supreme Court of the United States that a colored man was not a citizen of a State, but that the court did not decide that such a person could not be a citizen of the United States, I beg leave to refer to a few sentences of the prevailing opinion in that case. Judge Tancy says:

"The words 'people of the United States' and 'citizens' are synonymous terms, and mean the same thing. They both describe the political body who, according to our republican institutions, form the sovereignty, and who hold the power and conduct the government through their representatives. They are what we familiarly call the 'sovereign people,' and every citizen is one of this people, and a constituent member of this sovereignty. The question before us is, whether the class of persons described in the plea in abatement compose a portion of this people, and are constituent members of this sovereignty. We think they are not, and that they are not included, and were not intended to be included, under the word 'citizens,' in the Constitution, and can therefore claim none of the rights and privileges which that instrument provides for and secures to citizens of the United States."

And, sir, in respect to the other point to which I adverted, that doubt had been entertained, as to the power of Congress to declare and determine who should be citizens of the United States, I beg leave to refer for a moment to the dissenting opinion of Mr. Justice Curtis in the same case. He goes on to state that the only power granted to Congress is the power to establish a uniform rule of naturalization, and then he says:

"It appears, then, that the only power expressly granted to Congress to legislate concerning citizenship, is confined to the removal of the disabilities of foreign birth."

And it was upon the strength of this opinion that the civil rights bill—which undertook to declare, through an act of Congress, that all persons born upon the soil shall be citizens of the United States—has been questioned, and, as I, stated the other day, one of the objects of the pending amendment to the Constitution is to remove this doubt.

Mr. T. W. DWIGHT—Can I say a word in explanation?

The PRESIDENT—The Chair cannot permit an infraction of the rule without unanimous consent.

Mr. DUGANNE—If there were any one reason more than another which should impel me to vote for this amendment, it would be to set at rest as far as our Constitution can, the "prevailing opinion" which the gentleman from Onondaga [Mr. Andrews] quotes, but which I consider the pestilent heresy, that would put the sovereignty of the State above the sovereignty of the nation. I have nothing to do with the opinions of gentlemen who derive the authority of our Federal Government from any State sovereignty, nor do I believe in the assumption of any State which claims State rights as belonging to it, or any State claiming that right. It was that claim which lay at the bottom of our struggles during the last twenty years. It was that which gave us a war, and it is that which must always be an embroiling subject, unless we can settle it by the acknowledgment, on the part of States, of their dependency, as States, in subordination to the nationality. I, therefore, shall vote for this amendment, because I deem it proper that it should enter into the organic law of our State.

Mr. RATHBUN—By looking at the Constitution of 1846 it will be seen that the term "citizen of the United States" is not to be found there and that the term citizen of the State of New York is there. Can any man conceive of any good reason except to take a shot at the Dred Scott decision, or something else, for putting in words that have never been there before? Is it worth while to be voting upon such a question and to impose unnecessary words upon the Constitution, which have not been there for the last twenty years, and I am told by members near me, have never been there and which never need be, and for this reason, that any man in the State of New York may be made an elector as the Constitution and the laws of the State shall determine. It does not depend at all upon the question, whether he is a citizen of the United States or not. That has nothing to do with it. It depends upon the Constitution of the State alone. Now, if you look at the Western States, it is notorious that they have been in the habit for many years of allowing aliens to vote after a residence of a single year. Why? Because they were citizens, or were regarded so, of the State, and by the Constitution and laws of those States, they were authorized to exercise the elective franchise. If they have a right to make such a provision there, we have a right to do it here. They have done it and we have done it—that is we have allowed men to vote without at all requiring that they should be citizens of the United States. It is a matter wholly immaterial, therefore, in my judgment, and the proposition should not be inserted in the Constitution.

The question was then put on the amendment of Mr. T. W. Dwight, and it was declared lost.

Mr. CHAMPLAIN—I offer this amendment: The SECRETARY proceeded to read the amendment.

Mr. CHAMPLAIN moved to amend the section by striking out the words, "and a citizen for ten days," and inserting in place thereof the following, "and shall then be a citizen."

Mr. CHAMPLAIN—I stated on a previous

social, or in any way their personal elevation. There are 750,000 adult women in the State of New York, and it is proposed by one fell swoop or blow to intrust these 750,000 women with the grave privilege of the franchise. Sir, I have said once before during this discussion, that we live in a progressive age, and this is but another evidence of the fact. We live in a sort of transcendental age, when men are disposed to break up, disturb and overthrow all those landmarks of society upon which our government and society have rested since its formation. I am unwilling to make this innovation. I see in measures like these, and other measures which meet with more favor in this Convention, a disposition to disturb those solemn and sacred relations of society which have been our security during the past, and which are our only sure hope in the future. The 750,000 women, and that class of colored people to whom the franchise may soon be given, now number seven-twelfths of the entire population of the State of New York, and it is proposed to extend this franchise to this large class of people; not, sir, to secure any natural right, moral right or social right which now belongs to the female sex, but in order to cultivate, or rather to pander to that feeling of excitement and revolution incident to the age in which we live. Sir, this is a great age of unrest, for I can find no other word to express the idea I wish to convey to this Convention; an age in which society is disturbed and States disturbed, and in my judgment he is the best and truest statesman, and the best friend of mankind, who will do all in his power to restore the whole people to those social, political and solid relations under which this government of ours was formed. The ambition on the part of certain women, and of a very few women, propose this great change in our political and social life. Sir, there are in this Convention one hundred and sixty household gods, so to speak representing our homes and firesides. All these are represented by us in our respective heads of families. How many of these homes, how many of our wives and daughters and sisters desire to be intrusted with this right of franchise. In my judgment if you analyze this Convention not one-twentieth part of its members nor one-twentieth part of these 750,000 adult women in the State of New York, probably not twenty thousand, desire that the franchise shall be thus given; and even if it should be granted it would make such a revolution in the politics of this State, as would lead many who now desire to give the franchise to this class of people to repent of the act all the days of their lives. We have been agitating this question and kindred questions year after year, and what is the effect upon society? The gentleman from Columbia [Mr. Gould] stated what the effect was upon certain women of the State when he said there was twenty years ago in our county jails but one woman in twelve, whereas within the two years past upon an examination of the same State jails, there were four women out of every twelve persons. In the increase of crime, sir, if we will see the truth as it is, and speak the truth as it is, every man must admit that we are passing from bad to worse. But *while we are talking of progress here, society*

was never so much demoralized as it is during this, the year of our Lord, 1867, and it was never more demoralized in the old world, I am sorry to say, than in the new. Every man sees this in the great increase of crime, in the corruption of our public offices—

Here the gavel fell, the gentleman's time having expired.

The question was then put upon the amendment of Mr. Curtis, and declared lost by the following vote:

**Ayes**—Messrs. Beals, Bell, Corning, Curtis, Duganne, Farnum, Field, Folger, Fowler, Graves, Hadley, Hammond, Kinney, Lapham, M. H. Lawrence, Pond, Tucker, Veeder, Wales—19.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barnard, Beadle, Beckwith, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Cassidy, Champlain, Cheritree, Chosebro, Church, Clark, Clinton, Cochran, Colahan, Comstock, Conger, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Eddy, Fly, Kendra, Evarts, Ferry, Flagler, Francis, Frank, Fuller, Fullerton, Garvin, Goodrich, Gould, Grant, Greeley, Gross, Hand, Harris, Hatch, Hiscock, Hitchcock, Hitchman, Houston, Huntington, Hutchins, Jarvis, Kernan, Krum, Landon, Larremore, Law, A. Lawrence, A. R. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Magee, Masten, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Potter, President, Prindle, Prosser, Rathbur, Reynolds, Robertson, Rogers, Rolfe, Root, Roy, Rumsey, A. D. Russell, Schell, Schoonmaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Verplanck, Wakeman, Weed, Wickham, Williams—125.

Mr. MORRIS—I move that the Convention take a recess until four o'clock.

The question was put on the motion of Mr. Morris, and declared carried.

So the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock and resumed the consideration of the report of the Committee on the Right of Suffrage and the Qualifications to Hold Office, as reported from the Committee of the Whole.

Mr. BICKFORD—I move to strike out of the first line of section one the words "twenty-one," and insert in lieu thereof the word "eighteen." The object of the amendment is, of course, to grant to all persons of the age of eighteen years the right to vote on the same terms as others; in other words, to alter the age at which men shall become entitled to exercise the elective franchise from twenty-one to eighteen. It differs very materially from the amendment which I offered in Committee of the Whole, which included only those persons born in this State, and who also had always resided in this State, who had attained the age of eighteen years. I will not repeat the arguments I advanced yesterday in favor of allowing that



if no other gentleman wishes to speak in favor of the amendment than the gentleman who has obtained the floor [Mr. Kernan], and he yields to me, I have the right to the floor.

The PRESIDENT—The Chair does not put that construction on the rule.

Mr. KERNAN—I do not know, Mr. President, what may happen in the future, but I shall greatly regret on account of the welfare of this republic, founded on the Constitution of the United States, if the time ever comes when the people of the several States shall deem it wise to surrender to the federal government the right to declare who shall exercise the right of suffrage in each of those States. When that time shall have arrived, I submit that we will have entirely changed the form of our government, and will have progressed very far toward making a consolidated government rather than the one which has worked so well. But, sir, as yet no such thing is claimed to have occurred. It is conceded that to-day, at least, under the Constitution of the United States, as it now is, the people of this State have this right, and that Congress has no authority to declare who shall be electors in the State of New York, or any other State. That being true as constitutional law, and this body being here as delegates of the people of this State to frame a Constitution to be submitted to them, declaring who shall exercise the elective suffrage in this State, it seems to me that we fail in our duty if, in view of the agitation here and elsewhere, we do not at least affirm that the people who sent us here have that right, and that we do not propose to abdicate it. I say this not only in reference to what is agitated elsewhere, but in reference to a resolution which, to my surprise, I find printed and upon our tables, although it has not been called up for consideration. One of the delegates of the people of this State, sitting in this body [Mr. Wales], under a Constitution and laws which vest in the people of the State, the trust of regulating the right of suffrage, has put before us a resolution which reads in this wise, in a portion of its preamble:

"WHEREAS, The Executive and the Legislature of each State are, for certain purposes, *the agents* of the United States."

When and how did the Legislature of the State of New York, intrusted by the people of the State with the power to make laws, and being amenable to them, become an agent of the Federal government. If it be an agent of the Federal government, it is bound to do the will of that government, instead of being the law-making power of the people of this State, subject to the Constitution of the United States. Under that extraordinary preamble, a resolution is proposed which instructs the Committee on the Right of Suffrage of this body to inquire into the expediency of authorizing, by a constitutional provision, the Legislature of the State to accept a system of suffrage which shall be prescribed and promulgated by the Federal government. When and how did this Convention derive authority to invite the Federal government to take from the people of this State their clear and exclusive power to regulate the exercise of the elective franchise in this State. This power is essential to the good government of the State. It is essential to the

preservation of the rights of the people of the State reserved to them by the Federal Constitution, and it is essential to the perpetuity of the union of the States as it was formed. I trust we do not propose to surrender this power [Here the gavel fell].

Mr. E. BROOKS—I call for the ayes and noes.

Mr. CARPENTER—I move that the amendment of the gentleman from Onondaga [Mr. Comstock], be referred to the Committee on the Preamble, and the Bill of Rights.

SEVERAL MEMBERS—No! No!

The PRESIDENT—Does the gentleman from Dutchess [Mr. Carpenter] insist on his motion to refer?

Mr. CARPENTER—I withdraw it.

A sufficient number seconding the call for the ayes and noes, they were ordered.

The question was then put on the amendment of Mr. Comstock.

The name of Mr. Barker was called.

Mr. BARKER—I desire to be excused from voting. I do not regard the preamble or the resolution as necessary to protect our rights or define them. Nor do I think it necessary for this Convention to instruct the Senate of the United States as to how and wherein they shall amend the Federal Constitution. But when that proposition comes to this State to be ratified, I shall be found as I now am, advocating the unqualified right of the people of this State to define who are its electors. I withdraw my excuse and vote no.

The PRESIDENT—The gentleman cannot withdraw his excuse without the consent of the Convention. Is there any objection? There being no objection, the gentleman will be recorded in the negative.

The amendment of Mr. Comstock, was declared lost by the following vote.

*Ayes*—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Church, Cochran, Colahan, Comstock, Conger, Corning, Daly, Garvin, Gross, Hardenburgh, Hitchman, Jarvis, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Mattice, Monell, More, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, Robertson, Rolfe, Schell, Schoonmaker, Seymour, Tappen, Tucker, Veeder, Verplanck, Weed, Wickham, Young—50.

*Noes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Clinton, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—91.



rence, Lee, Livingston, Lowrey, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, Paige, A. J. Parker, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Roy, Rumsey, A. D. Russell, Schell, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Wickham, Williams—106.

Mr. CASSIDY—I offer the amendment which I offered in the Committee of the Whole.

The SECRETARY proceeded to read the amendment, as follows :

Add to the section the following :

This section shall not apply to any man of color who shall not be an actual resident of this State, at the time when this Constitution shall go into operation, unless such man of color, at the time when he may offer his vote, shall have been for five years immediately preceding, an actual resident of the State.

Mr. CASSIDY—The object of this amendment is not to require of any of the present colored population of the State of New York, but the future colored population, the same conditions that are exacted of foreign born citizens. I desire to say nothing in advocacy of this amendment for it speaks for itself. Whatever of equity or propriety there is in it will be apparent on the mere face of the statement. I desire to say, however, on this occasion, in reference to my vote on the question of suffrage for women, that it was controlled by the consideration, that under the ruling of the chairman of the Committee of the Whole, the question was not in a shape to be submitted separately. Whenever those who have charge of that measure shall place it in a shape where it may be submitted to the popular vote, I shall redeem the pledge I made in the early part of the debates on this subject, and vote for such submission. I call for the ayes and noes on my amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Cassidy, and the Secretary proceeded with the call.

The name of Mr. Masten was called.

Mr. MASTEN—Mr. President, as this amendment is to affect the colored gentleman, it is within the agreement I made with Judge Ketchum, and I ask to be excused from voting.

The amendment of Mr. Cassidy was lost by the following vote :

**Ayes**—Messrs. Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Church, Cochran, Colahan, Comstock, Corning, Garvin, Hardenburgh, Hitchman, Jarvis, Kernan, Larremore, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Murphy Nelson, A. J. Parker, Potter, Robertson, A. D. Russell, Schell, Tappen, Tucker, Veeder, Verplanck, Wickham—38.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Barnard, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Corbett, Curtis, Daly, Duganne, C. C. Dwight, T.

W. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Folger, Fowler, Francis, Frank, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hadley, Hammond, Harris, Hiscock, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, Paige, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Spencer, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—94.

Mr. T. W. DWIGHT—I offer this amendment :

The SECRETARY proceeded to read the amendment, as follows :

In the first line insert after the word "citizen," the words "of the United States," so that it will read, "every male citizen of the United States of the age of twenty-one years, who shall have been for ten days a citizen," etc.

Mr. T. W. DWIGHT—The reason why I offer this amendment is that I think it is desirable that we should fix in this Constitution the fact that citizens of the United States are entitled to suffrage. Now the mode, as I understand it, in which, practically, a person becomes a citizen of a State is through citizenship of the United States, and that may be either through birth or naturalization. The only objection I have heard urged to the insertion of this clause is a *dictum* in the Dred Scott case, in which it has been thought that there was something said by the court adverse to the colored man having a citizenship of the United States. But, if I remember that decision, the precise point decided was that the colored man was not a citizen of a State, and that was the only point that was really decided in the case. Scott brought an action against Sandford, in the United States Court, in the District of Missouri, for his freedom, on the ground that he could sue in that court, being a citizen of one State suing a citizen of another State, in accordance with the well known provision in the United States Constitution. The court decided that he could not sue on that ground for he was not a citizen of a State. There is no decision that the colored man cannot be a citizen of the United States, nor is there likely to be one, because Chief Justice Taney pronounced that decision on the theory that the colored man was degraded. But that has been changed by the war, and no court will in my opinion ever decide that a colored man is not a citizen of the United States. If I understand the provisions of the civil rights bill, it was one of its objects to establish the citizenship of the negro. I am unwilling that the Convention by striking out the clause reported by the committee shall indorse the idea that a colored man cannot be a citizen of the United States. More than this, I desire that this clause be inserted, as we thereby recognize our paramount allegiance to the United States, and repudiate the doctrine of State rights. For these reasons I am desirous that this amendment should prevail.

Mr. ANDREWS—As I understand the decision in the Dred Scott case, referred to by the gentleman from Oneida [Mr. T. W. Dwight], it was decided by the court, and in that decision to some

United States. Now, you remember, Mr. President that when I spoke first on the question of suffrage, I brought to the attention of this Convention a law of the State of New York, passed in 1825, and not yet repealed, that a person of foreign birth, having declared his intentions, was permitted to hold real estate, was held subject to military duty, though he was not by that act permitted to vote. Such a person is now, under the laws of the State of New York, for aught I know to the contrary, still liable to military duty, and the great reason has been urged for the extension of the elective franchise to a certain class of the population is that they have been held subject to military duty. Therefore I can see no objection whatever on constitutional reasons to the passage of the amendment offered by the gentleman from New York [Mr. Gross] with this proviso in it. And as I do not desire to detain the Convention save to rectify the ground of the opinion on which I gave my vote, I shall not ask for the ayes and noes but will be content with a count.

The question was put on the amendment of Mr. Conger, and was declared lost.

Mr. WALES—I offer the following amendment to the first section and move that it be inserted at the end of the tenth line:

"Provided that every woman of the age of twenty-one years who shall possess the other qualifications of male citizens, and whose name shall appear upon the assessment roll, and who shall have paid a tax on personal property or on real estate, shall have the same right to vote, that male citizens have." [Laughter.]

Mr. WALES—I do not ask, Mr. President, that this amendment be adopted, because suffrage is or is not a natural right, nor because it is or is not a conventional privilege; but I do ask the members of this Convention to place it in the Constitution as an act of justice to those for whose benefit I offer it; and in honor of the fathers who, in the primal days of the republic, nay, before the foundations of the government were cemented by the blood of its martyrs, made it a fundamental principle of American statesmanship, that there should be no taxation without representation.

Mr. E. A. BROWN—I must say, Mr. President, I have been not a little pressed with these propositions to allow women to vote, and to allow the nice boys of eighteen years of age also to vote. But, I feel somewhat relieved by the proposition of the gentleman from Sullivan [Mr. Wales], for if I understand the amendment, it removes one of my main objections to women voting. It provides that when they come to possess all the "other qualifications of men." [Laughter] That is to say, when they become men they shall vote. When that change comes about, my objection to their voting will cease. I desire to say further, that the only objection that I have to their voting, is that they are women. I object because they are women and for no other reason. As women, they are intrusted by nature with providing for the renewing of the race of men; they are called upon to take charge, not only of the tender infant, from the time of its birth, but they are by necessity intrusted with

its development before that time and under circumstances which require in the very nature of things a separation from, a relief from, as many cares as it is possible to withdraw from them. And, sir, it is impossible for scientific men, for naturalists, or for any class of learned people to determine what a terrible effect would be produced upon the rising generation of this country, if we were to add to the burdens, responsibilities, and the distractions of women's life the burden and the distractions, and the responsibilities of voting. Now, sir, if the amendment removes the difference between man and woman, I am decidedly in favor of it. [Laughter].

Mr. GRAVES—I rise for the purpose of making an inquiry whether that part of the amendment offered, was not intended to have the woman's residence the same length of time as that of a man's, and does it not mean that, when it says "possess the other qualifications of the men;" was not that the intention of the mover?

Mr. WALES—The intention was to have the woman's qualification to vote the same as those of the male citizen, and I did so express myself, notwithstanding the merriment that was made. I will, however, withdraw the word "other."

The question was put on the amendment of Mr. Wales and was declared lost.

The SECRETARY then proceeded to read the second section as follows:

"SEC. 2. No person who shall receive, expect to receive, pay, or offer or promise to pay, contribute, or offer or promise to contribute to another to be paid or used, any money, or other valuable thing, as a compensation or reward for a vote to be given at an election, shall vote at such election; and upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm, before such inspectors, that he has not received, does not expect to receive, has not paid, nor offered or promised to pay, contributed, nor offered or promised to contribute to others, to be paid or used, any money or other valuable thing, as a compensation or reward for a vote, to be given at such election. Laws shall be passed excluding from the right of suffrage idiots, lunatics, and all persons who may have been or may be convicted of bribery, or of any infamous crime, and all persons who have been voluntarily engaged in rebellion against the United States, unless pardoned by the President of the United States or the Governor of the State of New York. Laws shall be passed for punishing and for depriving of the right of suffrage, and excluding on challenge, persons who shall pay or contribute, or agree to pay or contribute, or who shall receive or agree to receive any money, property or valuable thing to promote the election of any particular candidate or ticket, or who shall make or be interested in any bet or wager dependent upon the result of any election. The payment of the expenses of printing, of the circulation of papers and documents previous to any election, are excepted from the operation of this section.

Mr. GRANT—I offer the following amendment to the second section:

Any person convicted of receiving a bribe to influence his action, or failure to act, in the dis-

charge of his duties as member of the Legislature or of any other public office or trust to which he has been elected or appointed, shall not be allowed to vote in this State, unless pardoned by the Governor, with the consent of the Senate by a two-thirds vote.

Mr. VERPLANCK—I rise to a point of order.

Mr. GRANT—I offer this amendment at the end of the first section. It is designed, mainly, as will be discovered from its terms, to reach cases of members of the Legislature who have been bribed. Sir, bribery in legislative action is one of the greatest and growing evils of which men of all parties constantly complain. That members of our Legislature are bribed, not singly, but by working majorities, is no longer disputed, and by the provisions of this report as amended so far, the whole subject of bribery is submitted to the action of the Legislature. The first point I make is that it is folly on the part of this Convention to submit the subject of bribery in the Legislature to legislative action. When the Legislature itself is corrupt do we expect it to punish its own corruption? Why, sir, we might as well submit it to the scholars in a school, who are constantly transgressing a rule or law of the school to provide and inflict punishment for the violation of that law; we might as well submit the question of punishment of misdemeanors to classes of the community who are alleged to be constantly guilty of those misdemeanors. Again, sir, the amendment I offer proposes to disfranchise the men only who receive the bribe. Sir, so long as we shall depend upon loose legislative provisions to put an end to bribery in the Legislature whereby the man who offers the bribe and the man who receives it are to be considered alike guilty, and neither compellable witnesses to testify against his partner in guilt, under the rule by which he need not furnish evidence for his own conviction, the bribery acts will remain a nullity on every statute book. So long as our laws provide that the man who offers the bribe shall be in the same category with the man who receives it, so long you put an end to the chances for judicial conviction, you put an end to even a prospect that you may ever reach the man who receives the bribe. Self protection locks the mouth of each as to all judicial inquiry against the other. Sir, I believe it to be necessary that we should turn loose one of the guilty pair, that we may use him against the other, and I select from the two, for disfranchisement the one most guilty, I select the one whose honor and trust, and oath have all been violated. He is the member who has taken the office, he is the man in whom we have reposed a trust. He is the man whose vicious act constitutes the injury, the wrong, and the guilt of which we complain. Now, sir, I think that we should carefully consider this amendment and adopt it as a part of our fundamental law, so that the members of the Legislature may read from their Red Books not that they may pass laws punishing bribery, but that members of the Legislature may be convicted of bribery by allowing the man who pays the bribe to testify against them on the trial without criminating himself, and that if proved guilty, they shall be forever disfranchised, and we will do more than has yet been done to

eradicate corruption from the legislative branch of the government.

The five minutes having expired the gavel fell.

The question was put on the amendment of Mr. Grant, and it was declared lost.

Mr. FIELD—I offer the following amendment: "After the end of the twelfth line insert—

The PRESIDENT—The Chair will inform the gentleman that that line has been stricken out.

Mr. FIELD—The twelfth line of the third section—

The PRESIDENT—We have not yet reached the third section.

Mr. DWIGHT—Before completing the third section, I move to reconsider the vote by which the part of the first section was stricken out.

The PRESIDENT—That can only be made by unanimous consent.

Objection being made, the motion was laid on the table.

Mr. CHURCH—I offer the following amendment:

Amend the section by inserting after the word "people," in the seventh and eighth lines, the words "and upon all questions which may be submitted to the vote of the people."

Mr. CHURCH—This section prescribes the qualifications of voters for all officers that now are or hereafter may be elected by the people. It seems to me proper that the same qualifications should exist upon all questions which may be submitted to the vote of the people. There are a great many questions that the Legislature may submit—questions provided in the Constitution, such as questions of debt, and others. Unless we insert this provision it will be in the power of the Legislature to prescribe qualifications for electors for that particular election, and they may enlarge the elective franchise or restrict it at their pleasure. It seems to me we should have the same rule applied to the election of all officers, and to all other questions on which the people will vote.

Mr. FOLGER—It seems to me that the case suggested by the gentleman from Orleans [Mr. Church] may very well occur; that some Legislature, desirous of procuring the indorsement by the people of, for instance, a debt proposed to be incurred, may provide that the question shall be submitted to the consideration of the people differently than the Constitution provides for the election of officers, and in my judgment it is proper to guard against that. But I should wish before voting for it to restrict the application of the amendment of the gentleman from Orleans [Mr. Church] to such questions as are provided for in the Constitution itself to be submitted, and therefore I move to amend the amendment as follows:

Strike out the word "may" and insert in lieu thereof the words "are required by the provisions of this Constitution to."

Mr. E. A. BROWN—I wish to remark that any article which provides for submitting a question of debt should provide that such questions should be submitted to the legal voters of the State. The Constitution does not now authorize the Legislature when it authorizes it to submit such questions, to submit to any other than the



legal voters of the State. It seems to me the amendment is entirely unnecessary.

Mr. COMSTOCK—I wish to ask the gentleman from Orleans [Mr. Church] to accept a slight amendment by adding the words "of the State at large" so as to avoid the question of municipal charters.

Mr. CHURCH—Certainly; I did not think there was any doubt under my amendment. If there is I accept it.

Mr. SMITH—I do not quite understand the object of the amendment, proposed by the gentleman from Ontario [Mr. Folger], and before voting should like to do so. I suppose all questions to be submitted to the people relate to the administration of the affairs of the State, and we are now determining a rule as to who shall participate in the government of the State. Why should one class vote upon questions submitted by a provision in the Constitution, and another class vote on questions submitted by act of the Legislature? I do not quite understand the reason of the distinction.

Mr. FOLGER—If I may be allowed to answer, I will, though perhaps the reason may not be a good one. It is just the same reason I stated in reply to the gentleman from Onondaga [Mr. Comstock] when he offered his amendment in the Committee of the Whole, to wit: that I considered the Legislature, in passing an enabling act for the calling of a Convention to revise the Constitution, has a right to include in the electoral body persons who are not authorized by the Constitution to be amended to vote for delegates. I wish especially to except that power from the restrictions proposed to be inserted in this Constitution by the amendment of the gentleman from Orleans [Mr. Church], although perhaps it is not necessary.

Mr. SMITH—I asked the question for information, and will say that the reason given for it is the reason why I shall vote against it.

The question was then put on the amendment of Mr. Folger and it was declared lost.

The PRESIDENT announced the question to be on the amendment of Mr. Church.

The name of Mr. Folger was called.

Mr. FOLGER—I ask to be excused from voting. Without the amendment which I proposed as an amendment to the amendment of the gentleman from Orleans [Mr. Church], I conceive it to be mischievous and dangerous; with this explanation I ask to withdraw my request to be excused, and if allowed to vote I will vote no.

There being no objection, Mr. Folger was recorded in the negative.

Mr. M. I. TOWNSEND—I ask to be excused on the ground that I have not heard this question discussed and do not understand its bearings.

The question was put on granting the request of Mr. M. I. Townsend and it was declared carried.

The amendment of Mr. Church was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, Axtell, Baker, Barker, Barnard, Barto, Bergen, E. Brooks, E. P. Brooks, Burrill, Carpenter, Cassidy, Champlain, Cheritree, Chesebro, Church, Clark, Clinton, Cochran, Colahan, Comstock, Conger, Corning, Ferry, Frank, Fuller, Fullerton, Garvin, Gross, Harden-

burgh, Hitchman, Jarvia, Kernan, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Mattice, McDonald, Merritt, Miller, Monell, More, Morris, Murphy, Nelson, Paige, A. J. Parker, Potter, President, Robertson, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Seaver, Seymour, Smith, Tappen, Tucker, Van Campen, Veeder, Verplanck, Wickham, Young—70.

*Noes*—Messrs. C. L. Allen, Alvord, Andrews, Archer, Ballard, Beadle, Beala, Beckwith, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Field, Folger, Fowler, Francis, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hammond, Hand, Harria, Hitchcock, Houston, Huntington, Hutchins, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merrill, Merwin, Opdyke, Pond, Prindle, Prosser, Rathban, Reynolds, Root, Rumsey, Silvester, Sheldon, Sherman, Spencer, Van Cott, Wakeman, Wales, Williams—67.

Mr. ALVORD—I move a reconsideration of the vote just had in the passage of the amendment of the gentleman from Orleans [Mr. Church].

Mr. CONGER—I object.

The PRESIDENT—The objection being made, the motion lies over under the rule.

Mr. GRANT—I offer the following amendment.

The SECRETARY proceeded to read the amendment as follows:

"No person shall become a voter in this State after 1872, unless he can read the Constitution of the State of New York, except such person be prevented from reading by physical disability only; *Provided, however,* That no person who shall have the right to vote under the existing Constitution at any time up to and including 1872, shall thereafter be deprived of the right to vote by reason of disability to read.

Mr. GRANT—It will be discovered from the provisions of this amendment that I do not propose to disfranchise any man who is now a voter nor any man who may become a voter up to the year 1873 a period of more than five years from this time. Sir, with the opportunities for education that we now have in this State, with our common school system, and with our thousands of school-houses that are found on the hill-sides and in the valleys throughout the entire domain of our State, open for the education of every person, I cannot believe that after 1872, more than five years from this time, with this prospective provision in the Constitution from which all will hear and know that ability to read is made a necessary qualification before they can vote, there will be within the State of New York, twenty-five native born citizens who cannot read the Constitution of the State. Again, sir, we are to look at the effect of this amendment upon foreign born citizens. Let us take two examples. An ignorant Chinaman, is thrown upon our shores, without any knowledge of our institutions. Whether in a republic or monarchy, whether voting for Governor of a State or postmaster he does not know. He cannot read. He has neither ability nor desire to improve. He has no admiration for our government, yet we make him a voter. Again, an



charge of his duties as member of the Legislature or of any other public office or trust to which he has been elected or appointed, shall not be allowed to vote in this State, unless pardoned by the Governor, with the consent of the Senate by a two-thirds vote.

Mr. VERPLANCK—I rise to a point of order.

Mr. GRANT—I offer this amendment at the end of the first section. It is designed, mainly, as will be discovered from its terms, to reach cases of members of the Legislature who have been bribed. Sir, bribery in legislative action is one of the greatest and growing evils of which men of all parties constantly complain. That members of our Legislature are bribed, not singly, but by working majorities, is no longer disputed, and by the provisions of this report as amended so far, the whole subject of bribery is submitted to the action of the Legislature. The first point I make is that it is folly on the part of this Convention to submit the subject of bribery in the Legislature to legislative action. When the Legislature itself is corrupt do we expect it to punish its own corruption? Why, sir, we might as well submit it to the scholars in a school, who are constantly transgressing a rule or law of the school to provide and inflict punishment for the violation of that law; we might as well submit the question of punishment of misdemeanors to classes of the community who are alleged to be constantly guilty of those misdemeanors. Again, sir, the amendment I offer proposes to disfranchise the men only who receive the bribe. Sir, so long as we shall depend upon loose legislative provisions to put an end to bribery in the Legislature whereby the man who offers the bribe and the man who receives it are to be considered alike guilty, and neither compellable witnesses to testify against his partner in guilt, under the rule by which he need not furnish evidence for his own conviction, the bribery acts will remain a nullity on every statute book. So long as our laws provide that the man who offers the bribe shall be in the same category with the man who receives it, so long you put an end to the chances for judicial conviction, you put an end to even a prospect that you may ever reach the man who receives the bribe. Self protection locks the mouth of each as to all judicial inquiry against the other. Sir, I believe it to be necessary that we should turn loose one of the guilty pair, that we may use him against the other, and I select from the two, for disfranchisement the one most guilty, I select the one whose honor and trust, and oath have all been violated. He is the member who has taken the office, he is the man in whom we have reposed a trust. He is the man whose vicious act constitutes the injury, the wrong, and the guilt of which we complain. Now, sir, I think that we should carefully consider this amendment and adopt it as a part of our fundamental law, so that the members of the Legislature may read from their Red Books not that they may pass laws punishing bribery, but that members of the Legislature may be convicted of bribery by allowing the man who pays the bribe to testify against them on the trial without criminating himself, and that if proved guilty, they shall be forever disfranchised, and we will do more than has yet been done to

eradicate corruption from the legislative branch of the government.

The five minutes having expired the gavel fell.

The question was put on the amendment of Mr. Grant, and it was declared lost.

Mr. FIELD—I offer the following amendment: "After the end of the twelfth line insert—

The PRESIDENT—The Chair will inform the gentleman that that line has been stricken out.

Mr. FIELD—The twelfth line of the third section—

The PRESIDENT—We have not yet reached the third section.

Mr. DWIGHT—Before completing the third section, I move to reconsider the vote by which the part of the first section was stricken out.

The PRESIDENT—That can only be made by unanimous consent.

Objection being made, the motion was laid on the table.

Mr. CHURCH—I offer the following amendment:

Amend the section by inserting after the word "people," in the seventh and eighth lines, the words "and upon all questions which may be submitted to the vote of the people."

Mr. CHURCH—This section prescribes the qualifications of voters for all officers that now are or hereafter may be elected by the people. It seems to me proper that the same qualifications should exist upon all questions which may be submitted to the vote of the people. There are a great many questions that the Legislature may submit—questions provided in the Constitution, such as questions of debt, and others. Unless we insert this provision it will be in the power of the Legislature to prescribe qualifications for electors for that particular election, and they may enlarge the elective franchise or restrict it at their pleasure. It seems to me we should have the same rule applied to the election of all officers, and to all other questions on which the people will vote.

Mr. FOLGER—It seems to me that the case suggested by the gentleman from Orleans [Mr. Church] may very well occur; that some Legislature, desirous of procuring the indorsement by the people of, for instance, a debt proposed to be incurred, may provide that the question shall be submitted to the consideration of the people differently than the Constitution provides for the election of officers, and in my judgment it is proper to guard against that. But I should wish before voting for it to restrict the application of the amendment of the gentleman from Orleans [Mr. Church] to such questions as are provided for in the Constitution itself to be submitted, and therefore I move to amend the amendment as follows:

Strike out the word "may" and insert in lieu thereof the words "are required by the provisions of this Constitution to."

Mr. E. A. BROWN—I wish to remark that any article which provides for submitting a question of debt should provide that such questions should be submitted to the legal voters of the State. The Constitution does not now authorize the Legislature when it authorizes it to submit such questions, to submit to any other than the

Mr. LIVINGSTON—I would like to ask the gentleman if political offices are included in his suggestion?

Mr. SEYMOUR—I wish to suggest the propriety of dropping the word "engagement." It is a very general and hardly a legally defined word. Let the whole rest upon the word "promise." It seems to cover the point, and is a very proper amendment, I think. I do not understand what the gentleman means by the word "engagement."

Mr. ANDREWS—I think there is no objection to withdrawing that word, and I will consent to do so.

Mr. PRINDLE—I would like to inquire of the gentleman from Onondaga [Mr. Andrews] whether his amendment would cover the case of a man running for office, where the candidate makes a promise to act in a particular manner, if the party will vote for him.

Mr. ANDREWS—I so understand it.

Mr. PRINDLE—It strikes me that it embraces too much, because if a person should be running for office, and a member of his own party should be distrustful of him, the candidate might promise to him that he would act with his party or vote upon any question in a certain manner. I am not positive that this amendment would include that case, but it strikes me there is danger it would.

The question was then put on the amendment proposed by Mr. Andrews, and it was declared adopted.

Mr. VERPLANCK—I offer the following amendment: After the words "United States" in line 17 of section 2, add, "or in defrauding the government of this State or of the United States during the late rebellion."

The question was put on the amendment of Mr. Verplanck and it was declared carried.

Mr. KRUM—I offer the following amendment: "After the word "expect," first line, insert the words "or offer." Also after the word "received," 8th line, insert the words, "has not offered." My object in inserting the words "or offer," in the first line, after the word "expect," and the words "has not offered," in the eighth line, after the word "received," are as follows: As the section now stands it reads like this: "No person who shall receive, expect to receive, pay, or offer or promise to pay, etc." The word "offer" in the second line applies to the person who has paid, and not to the person who has received, and I desire to make the provision apply to the person who has offered to receive as well as to the person who has offered to sell his vote. I desire to make the offer to sell a ground of challenge, equally with the offering to buy. I propose to put both upon the same footing. I propose that the oath a person offering to buy shall take, shall also cover the case of a person offering to sell by the words I propose to insert.

The question was put on the amendment of Mr. Krum, and it was declared carried.

Mr. HARRIS—I move to strike out from lines, 15, 16, 17, 18, the provision in relation to the disqualification—

The PRESIDENT—The Chair will inform the gentleman that as long as it is desired to perfect the section, the motion to strike out cannot be entertained.

Mr. E. BROOKS—I renew the motion to adjourn. The question was put on the motion of Mr. E. Brooks, and it was declared carried. So the Convention stood adjourned.

FRIDAY, July 26, 1867.

The Convention met at 11 o'clock A. M.

Prayer was offered by the Rev. RUFUS W. CLARK.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. HADLEY—I ask for leave of absence until Tuesday evening next. I make the request on the ground of illness in my family.

There being no objection leave was granted.

Mr. MERWIN—I ask for leave of absence for three days on account of business engagements of long standing.

There being no objection leave was granted.

Mr. RATHBUN—It has become necessary that I should be absent. I therefore ask leave of absence until Monday.

There being no objection leave was granted.

Mr. SILVESTER—I wish to ask for leave of absence until next Wednesday.

There being no objection leave was granted.

Mr. W. C. BROWN—I will ask for leave of absence until Tuesday morning.

There being no objection leave was granted.

Mr. ARCHER—I ask for leave of absence for Mr. Larremore for five days on account of sickness in his family.

There being no objection leave was granted.

Mr. AXTELL—I ask for leave of absence for my colleague Mr. Cheritree, until Tuesday next.

There being no objection leave was granted.

Mr. SHERMAN—I ask for leave of absence until Monday next.

There being no objection leave was granted.

Mr. E. BROOKS—There are a considerable minority of this Convention asking for leave of absence for several days. I therefore move that when this Convention adjourns it adjourn to meet again on Monday evening next.

Mr. ALVORD—I rise to a point of order, that the motion cannot be entertained under the rule of the Convention.

The PRESIDENT—Objection being made the motion cannot be entertained.

Mr. E. BROOKS—I submit it is a privileged question.

The PRESIDENT—The Chair recognizes the question of an immediate adjournment as privileged.

Mr. BALLARD—I ask for leave of absence until Wednesday morning next.

There being no objection leave was granted.

Mr. SEAVER—I ask for leave of absence until Tuesday morning next.

There being no objection leave was granted.

Mr. OPDYKE—With a view to enable the gentleman from Richmond [Mr. E. Brooks] to offer his resolution, I move that the order of business be laid on the table temporarily.

The PRESIDENT—That would require a two-thirds vote.

Mr. FOLGER—I would ask leave of absence for myself and colleague, Mr. McDonald, until Monday evening.

There being no objection leave was granted.

Mr. SMITH—I ask for leave of absence until Tuesday morning.

There being no objection leave was granted.

Mr. LIVINGSTON—I ask for leave of absence until Tuesday morning.

There being no objection leave was granted.

Mr. ALVORD—I feel compelled, sir, now to object to granting any further leave of absence unless a vote shall be taken, and gentlemen give their reasons why they desire these leaves of absence. I am entirely willing to grant a leave of absence to gentlemen who stand up here and desire it, not for their own personal convenience, but from some absolute necessity, not otherwise.

Mr. MATTICE—I desire a leave of absence until Monday evening next, and I will state that I have immediate business to transact to-morrow which will render my attending the Convention an utter impossibility.

There being no objection leave was granted.

Mr. KERNAN—I ask for leave of absence for Mr. Sheldon, of Dutchess, on account of sickness in his family, until Monday evening.

There being no objection leave was granted.

Mr. OPDYKE—I rise to a point of order, that I made a motion to suspend the order of business and to temporarily lay it on the table; that motion ought to be taken up and acted upon.

The question was then put on the motion of Mr. Opdyke and it was declared carried.

Mr. E. BROOKS—That motion having prevailed, I move that when the Convention adjourns it adjourns to meet on Monday evening next.

The PRESIDENT—I would say that motion cannot be entertained without the consent of the Convention. There being no objection the motion of the gentleman from Richmond [Mr. E. Brooks] will be entertained.

Mr. E. BROOKS—Then I move that when this Convention adjourns this evening it adjourns to meet on Monday evening at seven and one-half o'clock.

Mr. MILLER—I move to amend that "when this Convention adjourns to-morrow it adjourns to meet on Monday evening at seven o'clock."

The question was put on the motion of Mr. Miller and it was declared lost.

Mr. GREELEY—I move to amend "providing the article on suffrage shall in the meantime be disposed of."

The question was put on the motion of Mr. Greeley, and it was declared to be lost.

Mr. GREELEY—I call for a division.

Mr. VERPLANCK—I rise to a point of order, that the gentleman from Westchester [Mr. Greeley] did not ask for a division until after the Chair had announced the result.

The PRESIDENT—The point of order is well taken.

Mr. GREELEY called for the ayes and noes on the motion of Mr. E. Brooks.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. DUGANNE—I desire to be excused from voting upon this question of adjournment, on the ground that I have not yet had an oppor-

tunity to consult with the chairman of the Committee on the Right of Suffrage, in order to learn how I should be permitted to vote, and I will briefly explain my reasons for asking to be excused. After the final vote was taken last night I passed up this aisle quietly, and was accosted coarsely and profanely—

Mr. TAPPEN—I rise to a point of order—

Mr. DUGANNE—I am explaining—

The PRESIDENT—The Chair thinks the explanation is scarcely parliamentary.

Mr. DUGANNE—Well, then, sir, I was accosted in a gentlemanly manner by an honorable member on this floor in these words—

The PRESIDENT—The Chair will inform the gentleman what transpired out of the Convention can hardly be alluded to in this chamber.

Mr. DUGANNE—I was merely explaining—

The PRESIDENT—The gentleman will proceed in order.

Mr. DUGANNE—I wish to ask permission to withdraw my request, to be excused from voting and to vote aye.

Mr. GREELEY—I object to his voting.

The PRESIDENT—It is for the Convention to say whether the gentleman shall vote or not.

The question was put on granting permission to Mr. Duganne to vote, and it was declared carried.

Mr. SEAVER—I ask to be excused from voting, for the reason that I have already obtained leave of absence. If I vote I would have to vote no.

The question was put on excusing Mr. Seaver to vote, and it was declared lost.

The SECRETARY proceeded with the call of the roll, on the motion of Mr. Brooks, and it was declared carried by the following vote:

*Ayes*—Messrs. C. L. Allen, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barnard, Bell, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Cassidy, Chesebro, Church, Clinton, Cochran, Colahan, Cooke, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Evarts, Ferry, Field, Francis, Fuller, Garvin, Goodrich, Gross, Hadley, Hardenburgh, Harris, Hatch, Hitchman, Houston, Huntington, Jarvis, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Mattice, McDonald, Merwin, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Pond, President, Prindle, Rathbun, Robertson, Rogers, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Seymour, Silvester, Sheldon, Sherman, Smith, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Cott, Veeder, Verplanck, Weed, Wickham, Young—88.

*Noes*—Messrs. A. F. Allen, Alvord, Barker, Barto, Beadle, Beals, Beckwith, Bickford, Bowen, E. P. Brooks, Case, Champlain, Clark, Comstock, Conger, T. W. Dwight, Ely, Endress, Farnum, Flagler, Fowler, Gould, Grant, Graves, Greeley, Hammond, Hand, Hitchcock, Kernan, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merrill, Merritt, Miller, Potter, Reynolds, Root, Rumsey, Seaver, Spencer, Van Campen, Wakeman, Wales, Williams—50.

Mr. ALVORD—Under the order of resolutions I desire to offer to the Convention a resolution



that seems to me must strike every one as eminently proper at this time, and I trust there can be no objection entertained to it. It will largely facilitate the business of the Convention in the right direction.

*Resolved*, That the President appoint a committee of five, whose duty it shall be, from time to time, to arrange the form and phraseology of each article as the same shall be agreed to by the Convention, and report to the Convention, but in so arranging the form and phraseology of the article they shall not alter the substance or meaning of the same as adopted by the Convention.

Mr. CONGER—I would suggest to the honorable gentleman from Onondaga that this is quite unnecessary, as we will have soon a committee of revision on every article in the Constitution.

The PRESIDENT—The Chair understands this resolution to call for such a committee.

Mr. ALVORD—It calls for a committee of arrangement on each of the different articles, as each article may be proposed from time to time. It does not interfere at all with the other committees.

The question was then put on the resolution of Mr. Alvord and it was declared adopted.

The PRESIDENT announced the special order, being the report of the Standing Committee on the Right of Suffrage and the Qualifications to Hold Office, as amended in Committee of the Whole.

Mr. T. W. DWIGHT—I call up for consideration the resolution offered by me on Saturday last.

The PRESIDENT—The Chair will inform the gentleman that it has already announced the special order of business.

Mr. VEEDER—Was not the special order laid on the table?

The PRESIDENT—It was, for a specific purpose. The Chair understands that purpose to be accomplished. The question now is upon the pending section of the report.

Mr. A. J. PARKER—I offer the following amendment: I propose to strike out these words, "And all persons who have been voluntarily engaged in rebellion against the United States unless pardoned by the President of the United States or the Governor of the State of New York." It proposes to disqualify a class of persons from voting that are not disqualified under the Constitution as it now is. It is in fact, therefore, imposing upon them a punishment enacted after the offense has taken place and is *ex post facto* in effect. I think it objectionable upon that ground and I also think it impolitic, as it must drive from this State all who have been engaged in this rebellion, no matter how penitent they may be, for the crime they have committed. I believe too, that it would be very impolitic to condemn a great class of persons, and to deprive them of the right of suffrage who have not been convicted of an offense. The previous portion of the section covers the case of all who have been convicted of crime, including of course treason; but if you are to deprive of the right of suffrage those who have been supposed to be guilty but have not been convicted, it would be always an

open question at the polls whether the person had been voluntarily engaged or not, and thus you change the inspectors of election into a tribunal to decide upon this most important question, the guilt of a person in regard to an offense punishable with death. It is also objectionable for the reason that appears from the amendment first offered by the gentleman from Tioga [Mr. E. P. Brooks]. They are to be excluded from voting unless pardoned by the President of the United States or Governor of the State of New York. Now the offense alleged is rebellion against the United States. It is certain that the Governor of the State of New York has no power over an offense against the general government. It is not proposed to disqualify those who have been engaged or may be engaged in rebellion against the State of New York; that is a felony of itself, provided for by our statutes and punishable as a capital offense. Of an offense of that kind, this Convention might take cognizance, but certainly not of anything relating to offenses against the general government. For these reasons, believing that it is wrong in principle as well as unpolitic to adopt the proposed new provisions, I move that these words be stricken out.

Mr. COOKE—Two days ago the distinguished gentleman from Onondaga [Mr. Comstock] when this question was before the Committee of the Whole informed the committee that the United States supreme court had decided against the right of States to exclude from the elective franchise any citizen for disloyalty, and warned the committee against adopting this provision lest it should be found in conflict with the highest judicial authority in the land. Yesterday the same gentleman proposed to this Convention a preamble which asserted the undoubted right of the people of this State, by virtue of their sovereignty, to establish and regulate for themselves the elective franchise, without interference or control of any other authority whatever. Now, I would like to know on which side the gentleman stands to-day, whether he stands upon the authority of the Supreme Court of the United States or upon his preamble, which denies all authority in the Federal courts or the Federal government in the matter. I, sir, for one, am not in favor of punishing offenses by disfranchising offenders, particularly for light offenses. I think it should be resorted to only in extreme cases. I notice on the part of gentlemen all around me, a good deal of sensitiveness on this subject of the rebels, and the manner in which they should be treated. Gentlemen inquire, is this persecution never to end? And yet these same gentlemen voted in a body in favor of disfranchising the speculator who had defrauded the government to the amount of a dollar.

Mr. A. J. PARKER—I voted against it.

Mr. COOKE—The gentleman says he voted against that proposition. That is only an exception which proves the rule. Why is this so? Is it so much worse for a man to have wrongfully pocketed a few paltry dollars that belonged to the government, than to have sought by armed treason to destroy the government? Is the former class of offenders to be utterly disfranchised and



There being no objection leave was granted.

Mr. SMITH — I ask for leave of absence until Tuesday morning.

There being no objection leave was granted.

Mr. LIVINGSTON — I ask for leave of absence until Tuesday morning.

There being no objection leave was granted.

Mr. ALVORD — I feel compelled, sir, now to object to granting any further leave of absence unless a vote shall be taken, and gentlemen give their reasons why they desire these leaves of absence. I am entirely willing to grant a leave of absence to gentlemen who stand up here and desire it, not for their own personal convenience, but from some absolute necessity, not otherwise.

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Mr. E. BROOKS — That motion having prevailed, I move that when the Convention adjourns it adjourns to meet on Monday evening next.

The PRESIDENT — I would say that motion cannot be entertained without the consent of the Convention. There being no objection the motion of the gentleman from Richmond [Mr. E. Brooks] will be entertained.

Mr. E. BROOKS — Then I move that when this Convention adjourns this evening it adjourns to meet on Monday evening at seven and one-half o'clock.

Mr. MILLER — I move to amend that "when this Convention adjourns to-morrow it adjourns to meet on Monday evening at seven o'clock."

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Mr. GREELEY — I move to amend "providing the article on suffrage shall in the meantime be disposed of."

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Mr. GREELEY — I call for a division.

Mr. VERPLANCK — I rise to a point of order, that the gentleman from Westchester [Mr. Greeley] did not ask for a division until after the Chair had announced the result.

The PRESIDENT — The point of order is well taken.

Mr. GREELEY called for the ayes and noes on the motion of Mr. E. Brooks.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. DUGANNE — I desire to be excused from voting upon this question of adjournment, on the ground that I have not yet had an oppor-

tunity to consult with the chairman of the Committee on the Right of Suffrage, in order to learn how I should be permitted to vote, and I will briefly explain my reasons for asking to be excused. After the final vote was taken last night I passed up this aisle quietly, and was accosted coarsely and profanely —

Mr. TAPPEN — I rise to a point of order —

Mr. DUGANNE — I am explaining —

The PRESIDENT — The Chair thinks the explanation is scarcely parliamentary.

Mr. DUGANNE — Well, then, sir, I was accosted in a gentlemanly manner by an honorable member on this floor in these words —

The PRESIDENT — The Chair will inform the gentleman what transpired out of the Convention can hardly be alluded to in this chamber.

Mr. DUGANNE — I was merely explaining —

The PRESIDENT — The gentleman will proceed in order.

Mr. DUGANNE — I wish to ask permission to withdraw my request, to be excused from voting and to vote aye.

Mr. GREELEY — I object to his voting.

The PRESIDENT — It is for the Convention to say whether the gentleman shall vote or not.

The question was put on granting permission to Mr. Duganne to vote, and it was declared carried.

Mr. SEAVER — I ask to be excused from voting, for the reason that I have already obtained leave of absence. If I vote I would have to vote no.

The question was put on excusing Mr. Seaver to vote, and it was declared lost.

The SECRETARY proceeded with the call of the roll, on the motion of Mr. Brooks, and it was declared carried by the following vote:

*Ayes* — Messrs. C. L. Allen, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barnard, Bell, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Cassidy, Chesebro, Church, Clinton, Cochran, Colahan, Cooke, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Evarts, Ferry, Field, Francis, Fuller, Garvin, Goodrich, Gross, Hadley, Hardenburgh, Harris, Hatch, Hitchman, Houston, Huntington, Jarvis, Larremore, Law, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Mattice, McDonald, Merwin, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Pond, President, Prindle, Rathbun, Robertson, Rogers, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Seymour, Silvester, Sheldon, Sherman, Smith, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Cott, Veeder, Verplanck, Weed, Wickham, Young — 88.

*Noes* — Messrs. A. F. Allen, Alvord, Barker, Barto, Beadle, Beals, Beckwith, Bickford, Bowen, E. P. Brooks, Case, Champlain, Clark, Comstock, Conger, T. W. Dwight, Ely, Endress, Farnum, Flagler, Fowler, Gould, Grant, Graves, Greeley, Hammond, Hand, Hitchcock, Kernan, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Merrill, Merritt, Miller, Potter, Reynolds, Root, Rumsey, Seaver, Spencer, Van Campen, Wakeman, Wales, Williams — 50.

Mr. ALVORD — Under the order of resolutions I desire to offer to the Convention a resolution

the rebellion, I supposed that, in his mind and in the mind of the Convention, the fact of *desertion* would be considered a crime as worthy of pursuit and punishment by our constitutional provisions, as any other offense that he reprobated by his amendment; and when the sense of the Convention, in which I concur, had refused to sanction this *first* general proscription, and the second clause, having affinity to it, in respect to fugitives from a draft; I assumed that this last clause—which in great part, if operative at all, must be supposed to be operative upon persons who hitherto have not been parts of our population or subject to our laws, and have committed, therefore, no crime within our State—would have been rejected; and when, by a small majority, it was announced by the count as carried I confess I was surprised. Mr. President, if there be in our own population any considerable number of persons who, without the excuses of popular agitation and fervor which obtained in the States that have been carried into actual rebellion, have given voluntary aid to the rebellion they certainly long before this should have been prosecuted, if not for treason, at least under some of the minor offenses punishable by the laws of the United States. I must consider therefore, that in the mind of the Convention and in the mind of the people of this State, if this clause shall be adopted, with the purpose of its having a practical operation, it must be intended, to reach, either for the purpose of repelling from our community or for the purpose of disfranchising, if they should settle among us, emigrants from other States, who there have been engaged in the rebellion. I do not, Mr. President, consider that it is fairly within the province of proscription,—even if proscription should be rightfully indulged in towards classes without prosecution, trial and conviction—thus to proscribe citizens of other States, who while such citizens shall have committed offenses of any complexion whatever. Least of all, Mr. President, am I disposed to place myself on the record as having refused to disfranchise deserters in our own population, and cowardly fugitives from the duty of soldiers in our own population, and having limited my proscription for faults in times passed by, to those who shall become members of this community, by removing from those States where alike the occasion and commission of the proscribed offense occurred.

Here the gavel fell, the gentleman's time having expired.

Mr. FERRY—I rise to inquire whether it would be in order to make a motion to amend this proposition?

The PRESIDENT—The Chair would inform the gentleman that two amendments are already pending.

Mr. FIELD—I would inquire whether it is in order to offer on amendment?

The PRESIDENT—The Chair would inform the gentleman that two amendments are already pending.

The question was then put on the amendment of Mr. A. J. Parker, and it was declared adopted by the following vote.

*Ayes*—Messrs. A. F. Allen, Alvord, Andrews, Archer, Armstrong, Baker, Barker, Barnard, Barto,

Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Cassidy, Champlain, Chesebro, Church, Clinton, Cochran, Colahan, Comstock, Conger, Corning, Curtis, Duganne, C. C. Dwight, T. W. Dwight, Ely, Endress, Evarts, Ferry, Flagler, Folger Francis, Fullerton, Garvin, Graves, Greeley, Gross, Hardenburgh, Harris, Hatch, Hiscock, Hitchman, Houston, Huntington, Hutchins, Jarvis, Kernan, Krum, Landon, Larremore, Law, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Lowrey, Ludington, Magee, Masten, Mattice, Merritt, Merwin, Monell, More, Morris, Murphy, Nelson, Opdyke, Paige, A. J. Parker, Potter, President, Rathbun, Reynolds, Robertson, Rogers, Rolfe, Roy, A. D. Russell, Schell, Schoonmaker, Seymour, Sheldon, Sherman, Smith, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Campen, Van Cott, Veeder, Verplanck, Wakeman, Weed, Wickham, Williams, Young—108.

*Noes*—Messrs. Axtell, Ballard, Beadle, E. P. Brooks, Case, Clark, Cooke, Corbett, Eddy, Farum, Field, Fowler, Frank, Fuller, Goodrich, Gould, Grant, Hadley, Hammond, Hand, Hitchcock, Kinney, Lapham, A. Lawrence, Lee, McDonald, Merrill, Miller, Pond, Prindle, Prosser, Root, Rumsey, Seaver, Wales.—35.

Mr. TAPPEN—I offer the following amendment to the second section:

Strike out the words "right of suffrage," wherever they occur, and inserting in lieu thereof the words "elective franchise."

Mr. TAPPEN—I shall not detain the Convention by remarks on my particular amendment. There has been abundance of discussion in this Convention as to the right of suffrage as distinguished from the elective franchise. Gentlemen have gone into the question of natural rights and of individual rights, but no word of mine would affect the subject in any manner. I think it is right in substance, and right in spirit, and in accordance with the privilege we are now disposing of.

Mr. MERRILL—With the same "regard for the landmarks of the past" which the gentleman who has offered this amendment [Mr. Tappen] manifested when he made substantially the same motion early in this discussion, I cannot favor the proposition. When the titles of the committees were read the gentleman moved to substitute "the elective franchise" for "the right of suffrage," and referred to the action of the Convention of 1846 as sustaining his choice of phraseology. But reference to that "landmark" shows precisely the opposite use of words; and, reverencing "the fathers," I must prefer the term they uniformly employed, namely: "the right of suffrage."

The question was put on the amendment of Mr. Tappen, and it was declared lost.

Mr. VEEDER—I move to amend the second section as follows:

Strike out all after the words "New York" in line eighteen, and insert in lieu thereof the following: "Laws shall be passed for punishing and for depriving of the right of suffrage, persons who shall make or be interested in any bet or wager dependent upon the result of any election."

Mr. VEEDER—The committee will observe the words I propose to strike out are so broad in

held not fit to participate in the administration of the government, while the latter class are received into full fellowship and allowed to come here and participate in measures calculated for the protection and for the good of the government? My friend from Richmond [Mr. E. Brooks] asserted the day before yesterday that this was a party question. All I have to say is, I thank God that I belong to no party that discriminates in favor of traitors. I shall vote against striking out.

Mr. HARRIS—Is not that the same amendment that was ruled out of order last night?

The PRESIDENT—The Chair is not aware that it is.

Mr. HARRIS—It is precisely the same, word for word.

The PRESIDENT—The Chair desires to state upon examination and reflection, it is satisfied it was wrong in its ruling last evening, and will endeavor to correct its error. The gentleman moved last night to amend to strike out a particular paragraph. It did not understand at the time it was a paragraph and ruled that it was out of order while amendments were being made to perfect the section.

Mr. GOULD—What is it that the gentleman from Albany [Mr. A. J. Parker] requires us to do, and in what position does he propose to place this Convention? The other day, sir, after due deliberation and ample discussion, this Convention decided that treason was odious and that traitors should take the back seats. Now, sir, the gentleman from Albany [Mr. A. J. Parker] deliberately rises and asks us to reverse that decision and decide that treason is not odious; that traitors shall not take the back seats. Now, sir, if the Convention decide in accordance with his wishes, the muse of history will drop a tear upon those words—would to God that those tears might blot them out forever. But, sir, that decision will remain as a standing memorial through all time, and I wish to ask gentleman whether they desire thus to record themselves and place themselves and the Convention in this position. Why, sir, two young men, neighbors of mine, with the most sincere and patriotic motives, entered into the army of the United States during the late rebellion. They were captured, sir, and placed in the prison-pen at Salisbury. I saw them when they came back, and heard their stories. They came back living skeletons. They had been fed upon a quart of rice water per day for a week together. Their intellects were hardly sufficient to tell their stories, and yet they did tell us. While in that starving pen the rebels would man the walls and fling meat and other provisions, just so in order to reach them, the prisoners had to go over the dead lines, as they were called, and the instant they did so, men stood with leveled muskets and shot them dead.

The PRESIDENT—The Chair desires to ask the unanimous permission of the Convention, inasmuch as by its ruling the gentleman from Albany [Mr. Harris] has been deprived from speaking, that he may be heard upon this question.

Mr. HARRIS—I am grateful to the Chair, and also to the Convention for its courtesy. I had desired to present this same motion last evening

and to make a few remarks upon it. I believe, sir, that this clause ought to be stricken out. I think that we should confine ourselves in the amendments we propose to the Constitution, to such amendments as are called for, and shown to be necessary by experience, and that will have some practical effect. I do not think that it is necessary for this Convention to put into the Constitution a record of its patriotism, or to require the Legislature to institute an inquisition to determine the loyalty or disloyalty of those who may ask to vote. Sir, the effect of this will be one or the other of two things. No man has yet been convicted of treason, and no man expects that any one will be convicted of it, in respect to this rebellion. Therefore, if it means to disfranchise a person who has been convicted, of course it will be a dead letter. Then the only other construction to be given to it is that the officers who are charged with the registry shall inquire into the loyalty or disloyalty of a voter who applies to be registered. That would be a most dangerous thing for the inspectors of election in every election to institute an inquisition as to what course the voter has pursued during the rebellion, and if it is to have any practical effect it is that. It seems to me that would be dangerous, and very objectionable. I hope we shall let the dead bury the dead, and we shall not undertake to perpetuate during the next twenty years this inquisition in relation to the course citizens may have taken in reference to the rebellion.

Mr. BICKFORD—I rise to make an inquiry. It is whether if this amendment prevails, it carries with it the amendment adopted yesterday, on the motion of the gentleman from Erie [Mr. Masten], to disfranchise those who committed frauds against the government.

The PRESIDENT—The Chair is unable to answer the question.

Mr. CONGER—I wish to suggest to the Chair, having seen the honorable gentleman from New York [Mr. Evarts] rise for the first time to participate in the discussion of this Convention, that inasmuch as he obtained a hearing by special request for the gentleman from Albany [Mr. Harris], that he will not include him in the number who have spoken.

The PRESIDENT—Four gentlemen had spoken before the gentleman from Albany.

Mr. CONGER—I think not. I think he was the fourth. I will ask the unanimous consent of the Convention that the gentleman from New York be allowed to speak.

The question was put on granting permission to Mr. Evarts to speak, and it was granted.

Mr. EVARTS—I feel greatly embarrassed in accepting the courtesy thus extended to me, for there certainly seems to be no good reason for it. Yet I feel disposed to say what I would have said when this amendment was before voted upon if I had supposed there was the least chance that the Convention would adopt it. When the learned and gallant member from Clinton [Mr. Axtell] proposed a series of predicaments which should exclude from the right of suffrage in this State, to wit: deserters, fugitives from conscription, and those who had been voluntarily engaged in



Mr. VEEDER—The Chair will recollect that my motion is to strike out.

Mr. BARKER—I am very glad the gentleman introduced this amendment, although I shall vote against it, for I think it will tend to bring to the attention of this Convention how unnecessary it is to embrace in the Constitution merely legislative provisions. A Constitution, as I understand it, is an instrument that creates a government, and that government makes, expounds, and executes the law. Now, I apprehend there is no gentleman in this Convention but believes that the Legislature, which we authorize, can define the crime of perjury just as they should define and make the laws which we are intending to incorporate in this section. There are a hundred lawyers in this Convention, and yet there are not enough of them to expound and explain the section of the Constitution which we are at this hour making. It is confusion worse confounded, and as soon as we begin to vote down these senseless, unmeaning amendments we will be where we can begin to arrive at an understanding, and get clear and concise language in the Constitution which we are making.

The PRESIDENT.—The Chair took the decision of the Secretary on that matter.

Mr. VEEDER—I now move to strike out lines twenty-six, twenty-seven and twenty-eight, which are connected, but if the other is to prevail, the provision inserted on the motion of the gentleman from Dutchess [Mr. Nelson], perhaps it is better to have it in, and I therefore ask leave to withdraw so far as it extends to those three last lines.

Mr. Veeder's motion was accordingly withdrawn.

Mr. SPENCER—For the purpose of allowing an amendment to be offered which will cover the whole ground in this section, I withdraw the amendment proposed by me.

Mr. C. C. DWIGHT—If the Secretary will be kind enough to read the amendment which I have offered, I desire to say one word in regard to it.

The SECRETARY proceeded to read the amendment, as follows:

Strike out all after line twelve and insert, "The Legislature shall have power by appropriate legislation to enforce the provisions of this section and to preserve and secure the purity and freedom of elections."

Mr. C. C. DWIGHT—It will be seen, I think, that this amendment accomplishes the object of the amendment offered by the gentleman from Steuben [Mr. Spencer], in authorizing the Legislature, by appropriate legislation, to enforce the provisions of this article. Such legislation appropriate to that point would be the passage of a law making the violation of an oath prescribed by that section, perjury. It also accomplishes very fully the design of the gentleman from Erie [Mr. Masten] in the amendment offered by him, and which is now incorporated in this section, but which will be struck out by this amendment, to wit, to authorize the Legislature, by appropriate legislation, to enforce the preceding provisions of this section; and I think that no gentleman has failed to observe, who has examined this section as a whole, that the language employed in the latter part of the section by the gentleman from Erie [Mr. Masten]

is precisely identical with that employed by the gentleman from Schenectady [Mr. Landon], which forms the first part of this section. That is to say, you have first put into the Constitution a law forbidding, and denouncing a penalty for certain offenses against the franchise, and then you have gone on and authorized the Legislature to pass laws to precisely the same effect. My amendment, it will be observed, leaves in the section a constitutional provision for challenge at the polls, for any act of bribery either in giving or receiving, offering to give or offering to receive, etc., and it then authorizes the Legislature, by appropriate legislation, to enforce all these important provisions to secure the purity of the elective franchise, so far as legislation can accomplish it.

Mr. FOLGER—The debate has shown so much as this, that there is a unanimous desire to reach and redress the evils complained of here, and it has also shown another thing, that there is a distrust of the Legislature, which should have the power to enact laws to secure that end. I think that distrust is unfounded. I think if we look back to the requirements of the Constitution of 1846, and the legislation succeeding it, that we shall find that a Legislature never refused to pass laws to secure the purity of elections, going as far as they had constitutional power to do. Now, then, let us compromise on this ground. Let us place some enactments which shall be clear and lucid in the Constitution, and leave it to the coming Legislature to enact laws to carry it out; not only leave it to them, but make it their imperative duty at the next session after the Constitution to pass such laws. And I have prepared a section which I propose to offer at the proper time, and which is as follows:

SEC. 2. The Legislature at the session thereof next after the adoption of this Constitution shall enact laws excluding from the right of suffrage idiots, lunatics, and all persons who have been or may be convicted of bribery or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. It shall also, at the same session, and from time to time, enact laws for preserving the purity of elections, and for depriving, upon challenge at the polls, every person who shall violate such laws of the right to vote at an election.

Mr. C. C. DWIGHT—I accept the amendment offered by the gentleman from Ontario [Mr. Folger], and I will withdraw the amendment offered by me in order to allow the gentleman from Ontario [Mr. Folger] to offer his.

Mr. FOLGER—I offer the following amendment as a substitute for the second section:

SEC. 2. The Legislature, at the session thereof next after the adoption of this Constitution, shall enact laws excluding from the right of suffrage idiots, lunatics, and all persons who have been or may be convicted of bribery or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. It shall also, at the same session, and from time to time, enact laws for preserving the purity of



their character and in their import, that it will practically exclude any political organization from holding any meeting, or having even a general committee. The committee will observe the words are "and excluding on challenge persons who shall pay or contribute, or agree to pay or contribute, or who shall receive or agree to receive any money or valuable thing to promote the election of any particular candidate or ticket." Thus, any public meeting called, speakers invited, expenses incurred for music, or for any other purpose of getting together a company for the purposes of an election, the objects of which are undoubtedly for the advancement of some particular ticket or candidate, are entirely precluded from any such purpose whatever; and I submit the balance of the section is quite broad enough, that precedes this proposition. I propose to cover all possible cases of corruption at the ballot box, thus leaving in the provision which excludes parties from voting that have made any bet or wager.

Mr. NELSON—I desire to amend the section, or offer a substitute for it, so that it will read as follows:

"Laws shall be passed for punishing and for depriving of the right of suffrage, or excluding on challenge, persons who shall corruptly pay or contribute or thus agree to pay or contribute, or who shall corruptly receive or thus agree to receive any money, property or valuable thing to promote the election of any candidate or ticket, or who shall make or be interested in any bet or wager dependent upon the result of any election. The payment of the expenses of printing, of the circulation of papers and documents previous to any election, are excepted from the operation of this section."

Mr. NELSON—I offer this amendment, and it seems to come in connection with the amendment proposed by the gentleman from Kings [Mr. Veeder], for this reason. In the statute of the State the purity of elections, to secure the provision is as follows: "Whoever shall pay or contribute any money to promote the election of any particular person or ticket." Our statute provision says, "promote the election of any person or ticket." The provision of this instrument is "to promote the election of any particular candidate or ticket," so that you will see the only change between our statute and the provision in this instrument is the change of the word "candidate" for "person." Under the provision of the statute, as it existed in the State, the Supreme Court in the case of *Jackson v. Walker*, which was a case of allowing a log cabin to stand in a certain place until after election, the agreement was like this: "You allow this log cabin to remain until the day after election for the use of the whig party, and if not taken down I will be personally responsible to pay you one thousand dollars." In a suit brought upon that contract, the question arose whether it came within the prohibition of the statute. "Was it a contract," the court asked, "to promote the election of any person or ticket?" Judge Bronson, in delivering the opinion, although the man lost his money, although it was not a corrupt purpose, used this language:

"The statute, after forbidding several things, declares that money shall not be contributed 'for

any other purpose intended to promote an election of any particular person or ticket.' It requires no argument to prove that this money was to be paid to promote the election of particular persons, to wit, General Harrison and the whig candidates for Congress, etc.; and a particular ticket, to wit, the electoral ticket in favor of General Harrison for President, and the ticket for whig members of Congress, etc. The parties intended to accomplish the very thing which the statute declares to be illegal. No one can wink so hard as not to see it." \* \* \* "It is said that the statute only forbids the contribution of money for corrupt purposes. But the statute says nothing about corruption. It declares that the thing shall not be done. With two specified exceptions, it provides that money 'intended to promote an election' shall not be contributed. The Legislature evidently thought that the most effectual way 'to preserve the purity of elections,' was to keep them free from the contaminating influence of money."

In the court of errors, in 7th Hill, the judgment in this case was affirmed by a tie vote of the court.

The question was then put on the amendment of Mr. Nelson, and, on a division, it was declared carried by a vote of sixty-one to thirty.

Mr. SPENCER—I offer the following amendment to the substitute, by adding at the end of line twelve the following: "And every person who shall willfully and corruptly swear or affirm falsely on such challenge, shall be deemed guilty of willful and corrupt perjury." I am opposed to including in the Constitution of the State a code of criminal law. But, if it is to be there, I think it necessary and essential that it should be so complete that it may be effectual. We have, as this section now stands, provided that the elector who is challenged for certain causes, shall be required to swear; but it is not provided by the same section, or elsewhere in the Constitution, so that any penalty may be affixed to false swearing, nor is there any statute law of the State which would punish false swearing in that particular, the only provision being, upon this subject, that wherever an oath may be required by any officer, judicial, executive, or administrative, a false oath taken before such officer shall be deemed perjury. It is to be doubted, at least, whether this provision of the Constitution can be so construed that it can be said that the officer is authorized to require an oath, but it is only to be taken by the elector as a condition for the allowance of his vote.

Mr. C. C. DWIGHT—I quite agree with the views of the gentleman who has just taken his seat, and I desire to say it is my purpose, when it shall be in order, and I have attempted for some time to get the floor for that purpose, to offer the following amendment, which I shall read as a part of my remarks, as an amendment to the amendment of the gentleman from Steuben [Mr. Spencer].

The PRESIDENT—The Chair would inform the gentleman that his amendment is now admissible.

Mr. BARKER—I rise to a question of order, that two amendments are now pending.

The PRESIDENT—The motion of the gentleman from Kings [Mr. Veeder] has been disposed of.

Mr. VEEDER—The Chair will recollect that my motion is to strike out.

Mr. BARKER—I am very glad the gentleman introduced this amendment, although I shall vote against it, for I think it will tend to bring to the attention of this Convention how unnecessary it is to embrace in the Constitution merely legislative provisions. A Constitution, as I understand it, is an instrument that creates a government, and that government makes, expounds, and executes the law. Now, I apprehend there is no gentleman in this Convention but believes that the Legislature, which we authorize, can define the crime of perjury just as they should define and make the laws which we are intending to incorporate in this section. There are a hundred lawyers in this Convention, and yet there are not enough of them to expound and explain the section of the Constitution which we are at this hour making. It is confusion worse confounded, and as soon as we begin to vote down these senseless, unmeaning amendments we will be where we can begin to arrive at an understanding, and get clear and concise language in the Constitution which we are making.

The PRESIDENT.—The Chair took the decision of the Secretary on that matter.

Mr. VEEDER—I now move to strike out lines twenty-six, twenty-seven and twenty-eight, which are connected, but if the other is to prevail, the provision inserted on the motion of the gentleman from Dutchess [Mr. Nelson], perhaps it is better to have it in, and I therefore ask leave to withdraw so far as it extends to those three last lines.

Mr. Veeder's motion was accordingly withdrawn.

Mr. SPENCER—For the purpose of allowing an amendment to be offered which will cover the whole ground in this section, I withdraw the amendment proposed by me.

Mr. C. C. DWIGHT—If the Secretary will be kind enough to read the amendment which I have offered, I desire to say one word in regard to it.

The SECRETARY proceeded to read the amendment, as follows:

Strike out all after line twelve and insert, "The Legislature shall have power by appropriate legislation to enforce the provisions of this section and to preserve and secure the purity and freedom of elections.

Mr. C. C. DWIGHT—It will be seen, I think, that this amendment accomplishes the object of the amendment offered by the gentleman from Steuben [Mr. Spencer], in authorizing the Legislature, by appropriate legislation, to enforce the provisions of this article. Such legislation appropriate to that point would be the passage of a law making the violation of an oath prescribed by that section, perjury. It also accomplishes very fully the design of the gentleman from Erie [Mr. Masten] in the amendment offered by him, and which is now incorporated in this section, but which will be struck out by this amendment, to wit, to authorize the Legislature, by appropriate legislation, to enforce the preceding provisions of this section; and I think that no gentleman has failed to observe, who has examined this section as a whole, that the language employed in the latter part of the section by the gentleman from Erie [Mr. Masten]

is precisely identical with that employed by the gentleman from Schenectady [Mr. Landon], which forms the first part of this section. That is to say, you have first put into the Constitution a law forbidding, and denouncing a penalty for certain offenses against the franchise, and then you have gone on and authorized the Legislature to pass laws to precisely the same effect. My amendment, it will be observed, leaves in the section a constitutional provision for challenge at the polls, for any act of bribery either in giving or receiving, offering to give or offering to receive, etc., and it then authorizes the Legislature, by appropriate legislation, to enforce all these important provisions to secure the purity of the elective franchise, so far as legislation can accomplish it.

Mr. FOLGER—The debate has shown so much as this, that there is a unanimous desire to reach and redress the evils complained of here, and it has also shown another thing, that there is a distrust of the Legislature, which should have the power to enact laws to secure that end. I think that distrust is unfounded. I think if we look back to the requirements of the Constitution of 1846, and the legislation succeeding it, that we shall find that a Legislature never refused to pass laws to secure the purity of elections, going as far as they had constitutional power to do. Now, then, let us compromise on this ground. Let us place some enactments which shall be clear and lucid in the Constitution, and leave it to the coming Legislature to enact laws to carry it out; not only leave it to them, but make it their imperative duty at the next session after the Constitution to pass such laws. And I have prepared a section which I propose to offer at the proper time, and which is as follows:

SEC. 2. The Legislature at the session thereof next after the adoption of this Constitution shall enact laws excluding from the right of suffrage idiots, lunatics, and all persons who have been or may be convicted of bribery or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. It shall also, at the same session, and from time to time, enact laws for preserving the purity of elections, and for depriving, upon challenge at the polls, every person who shall violate such laws of the right to vote at an election.

Mr. C. C. DWIGHT—I accept the amendment offered by the gentleman from Ontario [Mr. Folger], and I will withdraw the amendment offered by me in order to allow the gentleman from Ontario [Mr. Folger] to offer his.

Mr. FOLGER—I offer the following amendment as a substitute for the second section:

SEC. 2. The Legislature, at the session thereof next after the adoption of this Constitution, shall enact laws excluding from the right of suffrage idiots, lunatics, and all persons who have been or may be convicted of bribery or of any infamous crime; and for depriving every person who shall make, or become directly or indirectly interested in any bet or wager depending upon the result of any election, of the right to vote at such election. It shall also, at the same session, and from time to time, enact laws for preserving the purity of

elections, and for depriving, upon challenge at the polls, every person who shall violate such laws, of the right to vote at an election.

The PRESIDENT—If there is no objection, the amendment will be received as a substitute for the entire second section.

Mr. MURPHY—My objection to this amendment is to the latter part of it. I concur in the views which have been expressed by the gentleman from Ontario [Mr. Folger], that we may so far leave to the Legislature the enactment of laws as provided in the first part of his proposition. But the latter part does not restrict the Legislature to pass laws upon such specific points as we have thought worthy of consideration in that respect, or as requiring some enactment, constitutional in its character. He provides generally in the latter part of his amendment, that the Legislature may pass laws for securing the purity of the elective franchise. Where and how far may the Legislature go under such a general provision as that? Is it not our duty to point out in what particulars this franchise shall be protected, and to require the Legislature to pass laws for that purpose, not for the general purpose of securing the purity of the elective franchise? Under that they may disfranchise everybody. Securing the purity of the elective franchise will enable them to pass any kind of law they may deem necessary for that purpose, which may act very harshly and not as intended by this Convention. Let us see specifically in what way they may pass laws for the purpose of securing the elective franchise, and not leave it to them to judge what shall be deemed necessary by them to secure that franchise. I move, therefore, to strike out the last paragraph of the gentleman's amendment.

Mr. PAIGE—The objection I propose to this subject is, that it strikes out from this article the right of challenging a voter at the polls. In my judgment, there are but two effective remedies for this crying evil of bribery and corruption at elections. One is the right of challenging a voter for offering to purchase a vote, and putting him upon his oath, and the other is to impose the oath upon the successful candidate, that he has not used money for any corrupt purpose to secure his election. Sir, the result of it is to strike out of the Constitution where it should be, that provision in the original report of the Committee on Suffrage of allowing a challenge to the voter upon the ground of having sold or purchased a vote.

Mr. SMITH—I trust the amendment will not prevail. This corruption has reached a point where the people absolutely demand that there shall be a remedy provided in the organic law. They are not willing to turn this matter over to the Legislature. They lack confidence in the Legislature. They believe that for years back the Legislature of this State has been corrupt. They are not willing to trust men to enact laws against bribery and corruption, who have themselves secured their places by corrupt practices. I agree fully with the gentleman from Schenectady [Mr. Paige] that this provision, which enables you to challenge a man at the polls, and there put him upon his oath, is one of the most efficient provisions that can be made to meet the exigency. It is self-executing.

It is not subject to be defeated by the inefficiency or corruption of courts. It does not fail from a lack of evidence, delay, or want of the necessary machinery to secure the conviction of a party. But the question is decided at once, upon the oath of the challenged party, and before he is permitted to vote. I would not, by any means, lose this provision. On the contrary, I am in favor of adding to it another provision, making it the duty of the Legislature to enact such laws as may become necessary, not only to carry out this provision, but in other respects to purify our elections. I beg that we may not turn this whole matter over to the Legislature; for, by so doing, I greatly fear that we should fail to obtain what is absolutely necessary to secure the purity of our elections, and the stability of our government.

Mr. RUMSEY—Is an amendment in order now?

The PRESIDENT—An amendment is in order.

Mr. RUMSEY—Then, sir, I propose the following amendment to the amendment offered by Mr. Folger.

SEC. 2. No person who shall receive, expect, or offer to receive, pay, or offer or promise to pay, contribute, or offer or promise to contribute to another to be paid or used, any money, or other valuable thing, or make any promise to influence or as a compensation or reward for a vote to be given or to be withheld at an election, shall vote at such election; and upon challenge for such cause, the person so challenged shall, before the inspectors receive his vote, swear or affirm, before such inspectors, that he has not received, has not offered, does not expect to receive, has not paid, nor offered or promised to pay, contributed, nor offered or promised to contribute to others, to be paid or used, any money or other valuable thing, nor made any promise to influence or as a compensation or reward for a vote, to be given or to be withheld at such election.

Mr. RUMSEY—I do it for the purpose of having retained in the Constitution, as it shall pass from our hands, this provision, that allows us to challenge for the causes mentioned in the first part of the provision of the gentleman from Schenectady [Mr. Landon]. But I desire to have inserted in that provision, suggested by the gentleman from Schenectady [Mr. Paige], that the officer elected shall swear before he takes his office that he has done nothing to violate the provisions of that section. I will vote for it by way of perfecting the amendment, and leave it to the Legislature to pass such other laws as shall be necessary to guard against other evils which may arise under it, and which we do not now take cognizance of or cannot call to our minds.

Mr. GREELEY—I only rise to ask the mover to allow the first twelve lines of this section to stand as they are.

The PRESIDENT—The Chair will state what he understands to be the pending proposition. He understands this substitute was received by consent of the Convention for section two. He will receive any amendments.

Mr. GREELEY—It was received, but not adopted.

The PRESIDENT—The Chair understands that. The pending amendment is the proposition



proposed by the gentleman from Steuben [Mr. Rumsey].

Mr. CHESEBRO — Is another amendment now in order?

The PRESIDENT — The Chair will inform the gentleman that another amendment is not in order, as two are now pending.

The question was then put on the amendment of Mr. Rumsey, and it was declared carried.

Mr. DUGANNE offered the following amendment:

Insert at the end of line twelve the words, "or for a nomination of himself or any other candidate at such election."

Mr. DUGANNE — I am more impressed every day that I live with the necessity of providing that corruption shall be intimidated or repressed in the matter of nominations as well as in the matter of elections. It is thence, generally, that evil springs. In a county where a nomination is equivalent to an election, the venal and the corrupt man has only to see to it in the caucus that his nomination is successful, and if he can succeed in influencing by any means that nomination, an election is sure. I wish to strike at this generic evil—I do not wish to leave it to a challenge at the polls, of the voters. I wish to strike at the corruption which makes the candidate, which sets him before the people, and which commands the people to vote for him blindfolded—

Mr. MILLER — I rise to a point of order; that this amendment just offered, refers to a part of the section which we have just stricken out.

The PRESIDENT — The Chair will inform the gentleman he is not in order.

Mr. KERNAN — I submit we can hardly recognize in the Constitution, caucuses and nominating conventions.

Mr. DUGANNE — I ask the gentleman if we cannot recognize corruption in the Constitution?

Mr. WEED — By a statute of the State, any corruption in convention, or nominating caucuses, or anything of that kind is punished now, I think, and made a felony, or pretty near felony.

The question was then put on the amendment of Mr. Duganne, and it was declared lost.

Mr. CHESEBRO — I had drawn for the purpose of submitting to the Convention a proposition substantially like the one offered by my colleague from Ontario [Mr. Folger] embracing essentially his amendment in section two of this report, and I will send it to the Secretary to be read. I move it as a substitute for section two as proposed by the gentleman from Ontario [Mr. Folger].

The PRESIDENT — It cannot be received until the amendment of the gentleman from Kings [Mr. Veeder] is disposed of.

Mr. HARRIS — I move the adoption of the following amendment as an amendment to the amendment offered by Mr. Folger:

Strike out the words "idiots, lunatics and," in the amendment of the gentleman from Ontario [Mr. Folger].

Mr. MERRILL — I would inquire whether it does not require a motion to reconsider that, it having been acted upon?

The PRESIDENT — The Chair understands not. The Chair understands that the substitute

of the gentleman from Ontario [Mr. Folger], was received by consent of the Convention, and now stands in all respects as section 2 originally stood. The proposition of the gentleman from Albany [Mr. Harris] is in order.

Mr. HARRIS — As I have already said, I desire that this Convention should address itself to such amendments of the Constitution as experience has developed to be necessary or wise. No man has ever known an idiot to vote. The gentleman from Westchester [Mr. Greeley] spoke the other day about a lunatic having attempted to vote.

Mr. GREELEY — "Having voted"—

Mr. HARRIS — "Having voted," he says: but I apprehend that that is a single case. To my mind this provision is belittling the Constitution in attempting to exclude idiots and lunatics from voting, when no man has any apprehension that they will ever do any damage in that respect. It seems to me to be an idle thing, to require the Legislature to go on and inquire as to the sanity of every individual. Every man who is familiar with legal proceedings knows that it is a pretty difficult thing to determine whether a man is insane or not, and I have sometimes thought there were very few men whose minds were in all respects entirely sound. To determine whether a man is a lunatic or not seems to be very objectionable. I hope those words will be stricken out. They are unnecessary. No man supposes the purity of elections will be secured or promoted by retaining these words in the Constitution.

Mr. McDONALD — In regard to the propriety of excluding insane persons, there can be no doubt. The only objection the gentleman from Albany [Mr. Harris] makes is this, that it is impossible to tell who are idiots and who lunatics in some cases. We admit that. In my own town they have a lunatic there, whom one party makes vote one year and another party another year just as they happen to get possession of him, and there is no possibility of ruling him out. I live in a town where the election is pretty close; if it should be turned by one vote, then the lunatic would elect the whole ticket. I do not believe in that. Let us declare our position plainly; let us not be afraid to say lunatics and idiots should not vote as we believe, and leave it to the Legislature to find out the mode of determination. I might suggest that it be determined in this way—that no person be excluded unless the board of registry unanimously exclude him, and they would not exclude any one about whom there was any doubt. It seems to me this provision should be retained, and although it would not be, yet in some cases it may turn out that lunatics and idiots may elect the whole ticket when it is elected by a small majority, and without this provision there is no mode of prohibiting lunatics or idiots from voting.

Mr. ROBERTSON — I would be glad to know where any authority is found for an idiot or lunatic to exercise any civil right or perform any act for the benefit or injury of others recognizable by law; and when the law has been changed by which every inspector of an election in this State has always had the power to reject the vote of any animal destitute of reason, al-



though he presents himself before him in the form of a man, for the purpose of offering a vote, is there any inability of the law of this State to exclude idiots and lunatics, and will inspectors of election be so derelict to their duty as to receive the vote of a human being in that condition who would undertake to exercise this right of suffrage by doing a mere imitative act, which might be performed as well by well trained animals as by man, in full possession of his faculties. To be a citizen a human being must be possessed of reason. The mere human form does not give citizenship. The right of political citizenship is suspended during the temporary absence of reason; the mere possibility of a return of reason, joined to the ties of humanity, constitutes the only ground for including idiots and lunatics in the body politic. It is absurd to imagine a public officer elected by the votes (so called) of the inmates of a mad-house. The very word "vote" implies a rational selection, and I see no reason for excluding those destitute of reason from voting by a constitutional provision.

Mr. McDONALD — I wish to call the attention of the gentleman from New York [Mr. Robertson] to the first section; "every male citizen of the age of twenty-one." I suppose that would include an idiot.

Mr. CONGER — I will draw the attention of the Convention very briefly to what is proposed in the fourth section which follows, which is precisely what is in the fourth section of the Constitution as it now stands; "Laws shall be adopted for ascertaining by proper proofs, the citizens who shall be entitled to the right of suffrage." The gentleman who inserted this clause in regard to idiots and lunatics merely anticipated what will follow in the subsequent clause. In regard to this whole matter permit me to say to the Convention that this process of legislation has been sufficiently extended. When the Convention will have the opportunity of looking at the amendment proposed, by my honorable friend from Ontario [Mr. Chesebro], I think they will be satisfied that every constitutional provision will be compassed by his amendment, and then we will have substantially the second section of the Constitution of 1846, as was proposed to be amended by the Legislature of 1853, with all the suitable safeguards enabling this Convention to provide for the exclusion of improper votes by the right of challenge.

The question was put on the adoption of the amendment of Mr. Harris, and, on a division, it was declared carried, by a vote of 76 to 29.

Mr. DUGANNE—Is an amendment now in order?

The PRESIDENT—Amendments are now in order.

Mr. DUGANNE—I offer the following amendment, to the amendment of Mr. Folger, by adding thereto the following:

"And the Legislature may provide by law that records shall be kept under proper restrictions, by the police authorities of districts or cities, of all persons known by them to be engaged in illicit pursuits hostile to the community; and persons so engaged and being so recorded, under due pro-

visions of law, shall be excluded from registration as voters."

Mr. DUGANNE—I do not wish to argue this. I sufficiently stated my reasons for offering such an amendment some days ago, but I wish to know the sense of the Convention on what I regard a very important reform, and I respectfully ask the ayes and noes.

Not a sufficient number seconding the call the ayes and noes were refused.

Mr. CHESEBRO—I was about to state that I had drawn an amendment which I believed comprised all that is necessary for section two of this article. I agree with the gentleman from Chautauqua [Mr. Barker] in the remarks he has made in regard to the proceedings of this Convention for the last few days, that we have been engaged here in a system of legislation and have nearly forgotten the duty which is imposed upon us as members of this Convention. If we are to frame a fundamental law it must be in view of the fact that the Legislature, is to carry out by laws, the Constitution which we shall establish.

The SECRETARY proceeded to read the amendment of Mr. Chesebro, as follows:

SEC. 2. Laws shall be passed, excluding from the right of suffrage all persons who have been or may be convicted of bribery, larceny or of any infamous crime, and for depriving every person who shall by any act, directly or indirectly impair or corrupt the purity or freedom of any election, or become directly or indirectly interested in any bet or wager depending upon the result of any election, from the right to vote at such election; and every such offense shall be made a ground of challenge at such election.

The PRESIDENT—The Chair will inform the gentleman from Ontario, [Mr. Chesebro] that unless there be further propositions to amend the substitute of the gentleman from Ontario [Mr. Folger] it will now be considered. The Secretary informs the Chair that the amendment of the gentleman from Kings [Mr. Murphy] has not yet been passed upon.

The question was then put on the adoption of the amendment of Mr. Murphy, and, on a division, it was declared adopted, by a vote of 52 to 43.

The PRESIDENT—The Chair will first state the proposition as he understands it. It is to substitute the amendment which was now read for the substitute of the gentleman from Fulton [Mr. Smith], as amended.

Mr. A. J. PARKER — If it be in order, I will move to reconsider the last vote taken.

Objection being made, the motion was laid on the table.

Mr. CHESEBRO—Now, on the adoption of the amendment of the gentleman from Kings [Mr. Murphy] to the substitute offered by my colleague from Ontario [Mr. Folger], it will be seen that our propositions are substantially alike, and I cannot from my recollection of the reading of the amendment offered by the gentleman from Ontario [Mr. Folger] see much difference between them except that mine is a little more brief. I am opposed to any addition to this proposition I have made, for the reason that has been so well suggested on this floor this morning, of an opposition to anything like legislation. I think we have had enough

discussion now to convince the Convention that time has been wasted. We are here to frame a fundamental law, but not to enact laws for the punishment of crime; but the proposition of the gentleman from Steuben [Mr. Rumsey], which has received an affirmative vote, as an amendment to the proposition of my colleague from Ontario [Mr. Folger] is, in my judgment, nothing more than legislation. If gentlemen will turn to the statute book they will see that nearly all the offenses which are charged to have been committed against the purity of elections, are already provided for in the statute book, and that many of the propositions which we have been discussing for many days are now classed as misdemeanors and felonies. My proposition leaves this whole matter of punishment of offenses against the purity of elections, to the Legislature—where it legitimately belongs.

Mr. GREELEY—I wish to inquire if this is another proposition to strike out the first twelve lines.

The PRESIDENT—This is a proposition as an entire substitute for the proposition of the gentleman from Ontario [Mr. Folger].

Mr. GREELEY—If it is to strike out the first twelve lines, I hope it will be voted down.

Mr. MASTEN—I desire to say a few words on this subject. I find myself somewhat responsible for the confusion in which this second section seems to be. In the Committee of the Whole I maintained the doctrine which has been maintained here this morning, that we should not put a code of laws in the Constitution, but only confer certain general powers in clear and explicit language. I offered a substitute for the whole section substantially like the one now offered by the gentleman from Ontario [Mr. Chesebro]; I discovered that it would not be carried in Committee of the Whole, and I therefore had to add it to the amendment proposed by the gentleman from Schenectady [Mr. Landon]. If this amendment should not be carried, if I can get an opportunity, I will move to strike out from the section this matter I myself put in and perfect the section by adding a sentence.

Mr. A. J. PARKER—I hope this substitute of the gentleman from Ontario [Mr. Chesebro] may not be adopted. I do not agree with him at all, in the opinion he expresses, that we therefore waste our time in matters of legislation. On the other hand, I think we are making the best possible use of our time, and that we have made great progress yesterday and to-day in framing an article on this subject which perhaps may be acceptable to the people. At all events, we are wasting no time. Now, the effect of adopting this substitute will be that we will lose the first twelve lines of this section as it now stands.

Mr. CHESEBRO—Cannot the Legislature as well punish for this crime as for any other?

Mr. A. J. PARKER—I will not say they have not the power to punish, but I am doubtful whether they will do so. I am not one of those who are willing to trust to the Legislature. They have had the power heretofore but failed to use it, and I am not willing to trust them in the future. I am confident that no provision can be drawn either by the Convention or the Legislature more full or more precise or more explicit than the

first twelve lines of this second section, and I trust we shall not abandon it, for I think the whole merit of the section rests on that. I hope that this substitute may be voted down, and I only regret that the amendment of the gentleman from Kings [Mr. Murphy] was adopted, as it strikes out another important portion.

Mr. SEYMOUR—It seems to be conceded on all hands, that something is necessary to be done either under the law or the Constitution, to stay that flood of corruption which every one deplors. It has been the effort of this Convention to prepare and modify in this second section, provisions that we hope and believe will do it. Now, sir, I am not prepared to say that these provisions are in the exact language that would be best; I am not prepared to say but that they might be improved, and I am willing to wait and permit that committee which has been resolved upon this morning, to examine and if possible improve them without losing the benefit of their efficacy. I believe we need something in the Constitution, and I am unwilling to trust any longer to the wisdom, at least, of the Legislature to provide the remedy. We have seen this stream of corruption rolling through this State at every general election, for a period of more than ten or twenty years, and we have now confessedly, upon the statute book, no provision that can in the least restrain it. I shall regret if this Convention shall strike out or shall pass any substitute for these twelve lines, that embody so much toward preserving the purity of the elections in this State; and I hope, sir, that this repeated effort to accomplish that result will fail.

Mr. M. I. TOWNSEND called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put upon the substitute offered by Mr. Chesebro, and it was declared lost by the following vote:

Ayes—Messrs. Chesebro, Church, Conger, Hardenburgh, Masten, Mattice, More, Spencer, Verplanck—9.

Noes—Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Armstrong, Axtell, Baker, Ballard, Barnard, Barto, Beadle, Beals, Beckwith, Bergen, Bickford, Bowen, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Cassidy, Champlain, Clark, Clinton, Cochran, Comstock, Corbett, Corning, Curtis, Daly, C. C. Dwight, T. W. Dwight, Eddy, Evarts, Farnum, Ferry, Field, Flagler, Fowler, Francis, Frank, Fuller, Fullerton, Garvin, Goodrich, Gould, Grant, Graves, Greeley, Gross, Hammond, Hand, Hitchcock, Hitchman, Houston, Huntington, Hutchins, Kernan, Kinney, Krum, Law, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Livingston, Lowrey, Ludington, Magee, McDonald, Merrill, Merritt, Miller, Morris, Murphy, Opdyke, Paige, A. J. Parker, Pond, Potter, President, Prindle, Prosser, Reynolds, Rogers, Rolfe, Root, Roy, Schoonmaker, Seaver, Seymour, Silvester, Sheldon, Sherman, Smith, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Cott, Veeder, Wakeman, Wales, Wickham, Williams, Young—106.

Mr. AXTELL—I offer the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

The Legislature may pass laws excluding from the right of suffrage all persons who have deserted or may desert from the military or naval service of the United States in time of war, all persons who have left or may leave this State in time of war for the purpose of avoiding conscription into the military service of the United States, and all persons who have been voluntarily engaged in rebellion against the United States.

Mr. AXTELL—I have not offered this amendment in behalf of the bleeding eagle and I trust that "the quality of mercy" will not be badly "strained" if it shall be adopted. This whimpering about "mercy" to men who have forfeited every claim to citizenship, is not inspired by the spirit of true mercy, and its only practical effect is to degrade citizenship. It says that there is no difference between a manly performance of the duties of citizenship and a cowardly shrinking away from them.

Mr. MURPHY—I rise to a point of order. This Convention has by a vote disposed substantially of this resolution.

The PRESIDENT—The Chair thinks the point of order well taken.

Mr. AXTELL—There is this difference. This provides that the Legislature *may* pass laws; the other amendment which was offered in Committee of the Whole required that the Legislature *shall* pass laws.

The PRESIDENT—If there be that difference, the Chair will recognize the distinction.

Mr. AXTELL—No people can afford thus to degrade the elective franchise. No people can afford to strike such a blow at the pride of citizenship. The very life of this nation depends upon cherishing in the minds of the people a sense of the sacredness and dignity of the duties and privileges of citizenship. There must be cultivated that public virtue, that sensibility of principle, that "chastity of honor"—as some one has called it—which feels a stain like a wound; that which is the unbought grace of life, the nurse of manly sentiment and heroic enterprise, the real defense of the nation—that spirit which led out our triumphant heroes to their baptism of blood and their death of honor, that which marshaled our mighty hosts, who were ready to do and to die that the nation might live. To refuse to incorporate this amendment is to strike a blow at this spirit of honor. It is in effect to say that there is no difference, as to the privileges of citizenship, between the brave man and the coward—between the man who keeps his oath and the man who has perjured his soul. Sir, the military is perhaps the most sacred of oaths. Every soldier has sworn an oath as solemn as that registered in Heaven by that immortal man, whose words are emblazoned in our sight, an oath to defend the nation. The deserter, with this oath hot upon his lips, deserted his colors, perjured his soul, and left his comrades to be overborne for the lack of that service he was sworn to perform. This amendment is entirely practicable. Men can be challenged and thus excluded from suffrage, as in the law

under which this Convention is assembled. Some gentlemen are greatly alarmed at that terrible Latin phrase, *ex post facto*. That was the phrase that was hurled at us all the way through the rebellion. It was *ex post facto* to do this and to do that. With some classes it is always *ex post facto* to do right. I suppose the compelling of Robert E. Lee to surrender was *ex post facto*, and unconstitutional. It was done, however.

Mr. GRANT—When this subject was under consideration by an amendment proposed by the gallant Colonel from Clinton [Mr. Axtell]—

Mr. VERPLANCK—I rise to a question of order—that this is a change in the phraseology simply between the words "may" and "shall." Now suppose this amendment shall be voted down, and I should rise and propose that the Legislature, upon the application of ten citizens, might do the same thing, would that be a different proposition? And then somebody else might propose it on some other application; that of some distant State, for instance, and thus it might be brought up interminably. Now, I think the duty of the gentleman was to have moved to change the word when it was under consideration in the committee, and I think, therefore, it is out of order at this time.

The PRESIDENT—The Chair must respectfully differ from the gentleman from Erie [Mr. Verplanck]. He thinks the amendment is different. One is permissive and the other is imperative.

Mr. BARKER—I rise to a point of order. This has been once voted down, and the introduction of the word "shall" in place of the word "may" does not change the meaning. There is no power above the Legislature which can compel them to act, consequently there is no difference in legal effect between the words "shall" and "may."

The PRESIDENT—The Chair having received the amendment will allow it to take the usual course, unless there is an appeal. Does the gentleman appeal from the decision of the Chair?

Mr. BAKER—No, sir.

Mr. GRANT—The gentleman from Ulster [Mr. Hardenburgh], said it came with an ill grace from one whose constituents are anti-renters to speak in favor of this amendment. I was sorry to hear that fling made at so large a number of voters of this State; gentlemen who are citizens not only of Delaware but of Schoharie, Albany, Rensselaer and Columbia county, comprising a large portion of the electors of this State, who are men of integrity and as honorable, loyal, patriotic and brave, as any within its borders.

The PRESIDENT—The Chair must call the gentleman to order. He must discuss the pending question.

Mr. GRANT—This amendment proposes, not that deserters shall be disfranchised, not that rebels shall be disfranchised, but it places the whole power to disfranchise them or any class of them, in the hands of the Legislature, giving the Legislature the power to select, in their discretion, the classes of deserters the more guilty and dangerous, for instance—men who have received thousand dollar bounties, and jumped them ten times; men who have taken the oath of allegiance to the govern-



ment of the United States in the State of New York, and then deserted their State and the army of the United States, and joined the rebellion. It provides that the Legislature may disfranchise that class. It allows the Legislature to disfranchise the men, if you please, who starved our prisoners, who added to the crime of treason that of the murder of prisoners of war by slow, consuming famine; leaving with the Legislature the entire power to disfranchise and restore, as justice shall dictate. Can there be a doubt but that we should at least leave authority with the Legislature to disfranchise the more guilty classes of these offenders against the government? I go farther, and say, that the man who voluntarily engaged in rebellion, and stabbed at the life of our nation—the man who violated his oath of enlistment, deserted his ranks and fled to the enemy—should be absolutely expelled from any voice in our government, and forever disfranchised. And I ask gentlemen on this floor to recollect that as representatives of the people of a State, the great masses of whom are loyal, brave and true; we are making a record on this subject, a record to which the friends and enemies of our free government are looking with interest and anxiety, a record from which the supporters and defenders of the Union, and posterity who follow, may read the estimate in which we hold cowardice, desertion and treason, the estimate in which we hold integrity, loyalty and bravery. And to recollect that we are, this day, in recommending fundamental law to a people fresh from the stern lessons and realities of war, declaring to the world our judgment as to whether treason to republican government and desertion from its armies are qualities to be rewarded with citizenship and privileges of franchise. The question comes home to us, shall we clothe the traitor, the deserter, and the unrepentant rebel, with the same political power as the patriots and defenders of the Union? I implore gentlemen to reflect upon this subject, for our votes must answer this grave question.

At this point the gavel fell, the gentleman's time having expired.

Mr. EVARTS—It is entirely competent, Mr. President, for the Legislature under the suffrage clause as it at present stands before the Convention, to make either of the offenses alluded to by the gallant gentleman from Clinton [Mr. Axtell] a crime, and to carry as one of the consequences of that crime the loss of suffrage. If there is any principle that this Convention has adopted and will adhere to, it is this, that there shall be no double opportunities of exclusion from the franchise, one under the head of crimes, the other under the name of mere proscription. I shall oppose all efforts to provide for exclusion from the franchise for any less definite, less determinate blemishes of character or conduct, than such as shall be designated as crimes, and ascertained and punished as such, with the single exception of the constitutional ground of challenge at an election for bribery or corruption in reference to that election which stands, in the opinion of the Convention, and in my own, as a proper subject of constitutional provision. When we have determined that the Legislature may affix as a

penalty for crime, exclusion from the suffrage, we have given to the Legislature power to designate and punish as crime desertion of the forces of the United States in time of war, evasion of the draft in time of war, and giving voluntary aid to rebellion in time of war.

The PRESIDENT announced the question to be on the amendment of Mr. Axtell.

Mr. AXTELL called for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was then put upon the amendment of Mr. Axtell and it was declared lost.

Mr. MASTEN—I offer the following amendment.

The PRESIDENT—The Chair would inform the gentleman that section No. 2 is not now before the Convention, having been struck out and the amendment of the gentleman from Ontario [Mr. Folger] substituted in its place.

Mr. SPENCER—I now renew my motion to amend the substitute of the gentleman from Ontario [Mr. Folger].

The SECRETARY proceeded to read the amendment as follows:

Amend by adding at the end of line 12 the following:

"And every person who shall willfully and corruptly swear or affirm on such challenge, shall be deemed guilty of willful and corrupt perjury."

Mr. PRINDLE—I move to insert the word "falsely" so that it shall read "falsely swear."

Mr. SPENCER—I accept the amendment;

Mr. ROBERTSON—I would like to amend the substitute of the gentleman from Ontario [Mr. Folger] by inserting the following amendment:

The SECRETARY proceeded to read the amendment, as follows:

After the word "election," in the fifth line, insert the words "or employ any threat or other means to prevent or influence any one from voting at such election;" and after the word "election," in line twelve, insert the words "and has not employed any threat or other means to prevent or influence any one from voting at such election."

The question was then put on the amendment of Mr. Robertson, and it was declared lost.

The PRESIDENT then announced the question to be on the amendment offered by Mr. Spencer.

Mr. KRUM—I oppose that amendment, Mr. President, because it is entirely unnecessary. It has been decided over and over again in the books that, under the statute quoted by the gentleman, every oath or affirmation falsely taken in a proceeding, when such oath or affirmation is required by law, is perjury; and when the oath or affirmation shall be taken as required by this section, or falsely taken, that oath or affirmation is perjury without anything further being necessary.

The question was then put on the amendment of Mr. Spencer, and was declared lost.

Mr. MASTEN—I offer the following amendment. I propose to offer it as a substitute for the amendment of the gentleman from Ontario [Mr. Folger].

The SECRETARY proceeded to read the amendment as follows:

Strike out all after the end of line 12, and insert



the following: Laws shall be passed excluding from the right of suffrage all persons who may have been or may be convicted of bribery or any infamous crime, to prevent illegal voting, and to secure the purity and freedom of elections. All challenges shall be determined on the oath of the person challenged.

Mr. MASTEN—All I shall attempt to do on this occasion is to show to the Convention how this section will then read, and if gentlemen will run their eyes down to the end of line 12, they will then find that what is proposed to be added to this: "Laws shall be passed excluding from the right of suffrage all persons who may have been convicted of bribery or of any infamous crime, and to prevent illegal voting, and to secure the purity and freedom of elections; all challenges shall be determined on the oath of the person challenged;" and that will constitute, if adopted, the whole of section 2, unless further amended.

Mr. LIVINGSTON—I desire to offer a further amendment which I think the gentleman will accept.

The SECRETARY proceeded to read the amendment as follows:

"But all such laws shall be general and uniform in their requirements throughout the State."

Mr. MASTEN—I will accept that.

Mr. SMITH—I would like to say a single word, though, perhaps, it is unnecessary. I heartily approve of this amendment. As the section stands without it, the only provision it contains is the one allowing a challenge at the polls. There is no provision whatever left permitting the Legislature to pass any laws upon that subject, and something of the kind is absolutely necessary. It seems to me that the amendment offered judiciously supplies that defect.

Mr. ALVORD—I do not know but what I would have been perfectly willing to have gone for the amendment of the gentleman from Erie [Mr. Masten], as well as the amendment of the gentleman from Ontario [Mr. Folger], and I do not conceive that there is any particular difference, but it is an entirely different proposition now, as amended by the gentleman from Kings [Mr. Livingston], and I do not believe it is understood by the body of this Convention. Now, sir, I hold that so far as it regards all laws affecting the right to exercise the elective franchise they should in the main be uniform, while I hold at the same time there may be details in regard to the measuring out of the registry law, which would be applicable to incorporated cities and villages, that would not be applicable to the country, and would result in great damage and detriment to the country, whereas it would not affect injuriously the cities. Why, sir, take for instance the law as it at present exists in the cities of New York and Brooklyn. I am in favor of extending it to every incorporated city of the State, but I am not in favor of extending that uniformly to the rural portions of the State, for then it becomes onerous and burdensome, and it becomes in fact and truth, a stifling of the vote of the people. In a rural portion of this State, where men are known throughout the length and breadth of the district, each to the other, and where popu-

lation changes not from year to year, there is no necessity for an annual return of the registration by the appearance of the voter at the registry poll, in order to be registered. But in your cities, where there is a constant changing of population, tiding in one day and tiding out the next, there is a necessity for a registry every year, in order to determine who are entitled to vote, and for that reason I am opposed to the amendment of the gentleman from Erie [Mr. Masten], as amended by the gentleman from Kings [Mr. Livingston], because it contemplates having a strict unbroken law throughout the State, without permitting these necessary alterations and modifications according to the surrounding circumstances of the population which shall be entitled to vote. I trust the amendment as it is now, as amended by the gentlemen from Kings [Mr. Livingston], will be voted down by this Convention.

Mr. MATTICE—Cannot the question be divided? I call for a division of the question.

The PRESIDENT—The Chair understands the gentleman to call for a division of the question, so as to first include the proposition of the gentleman from Erie [Mr. Masten]. If there is no objection, the question will be so divided.

The question was then put upon the first portion of the amendment of Mr. Masten and it was declared lost.

Mr. LIVINGSTON—Since the main proposition has been voted down, the section is left as amended by the proposition of the gentleman from Ontario, and I do not see that it is necessary for me to offer this amendment, so I withdraw it.

The PRESIDENT—It cannot now be withdrawn, having been acted upon.

The question was then put upon the second portion of the proposition of Mr. Masten, being the amendment of Mr. Livingston, and it was declared lost.

Mr. EVARTS—I rise to suggest a verbal amendment to the clause under consideration as proceeding from the gentleman from Ontario [Mr. Lapham]. He provides that the Legislature "shall at its next session pass laws." I move to amend so that it may read: "Shall at its next session, and may from time to time thereafter pass laws."

The question was put on the amendment of Mr. Evarts, and it was declared carried.

Mr. McDONALD—I propose to amend by adding after the amendment of the gentleman from New York [Mr. Evarts] the following:

The SECRETARY proceeded to read the amendment as follows:

Amend the substitute by inserting after the words "excluding from the right of suffrage" the words "any person who shall violate any provision of this section."

Mr. McDONALD—The law as it now is provides that the only punishment for a person who violates this section is this—that he shall be deprived of his vote at that election. My amendment proposes that the Legislature shall enact a law which shall deprive him of the right of suffrage, so that any person who violates the first twelve lines shall be deprived by the Legislature of the right of suffrage, after being convicted of corrupting an elector. The object of it is this: a person will be unwilling to buy the vote of a venal

scoundrel who may the next day go before a grand jury and deprive him of the right of suffrage; and that will do more to prevent this corruption than anything else.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

Mr. VEEDER — I move the Convention do now adjourn.

The PRESIDENT announced the appointment of the following Committee of Revision provided for by the resolution of the Convention adopted on motion of Mr. Alvord:

Mr. ALVORD,  
Mr. TILDEN,

Mr. EVARTS,  
Mr. T. W. DWIGHT,

Mr. WEED.

Mr. MERRITT — I move the committee take a recess until four o'clock.

The question was put upon the motion of Mr. Veeder to adjourn, and it was declared lost.

The question then recurred upon the motion of Mr. Merritt, and it was declared carried.

So the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock.

In the absence of the President, Mr. ALVORD, of Onondaga, occupied the chair as President *pro tem*.

Mr. SEAVER—I ask unanimous consent to submit two reports from the Printing Committee.

Mr. CORBETT—I object.

Mr. VAN CAMPEN—Before we pass to the consideration of section 3 of the report of the Committee on the Right of Suffrage, I desire to call up the motion made by me to reconsider the vote of—

The PRESIDENT *pro tem*.—The Chair wishes to explain in reference to the reports of the Committee on Printing. It is a matter of necessity that they be received now, in order that the matter referred to in them may be printed during the recess.

Mr. CORBETT—In view of the facts stated by the Chair, I withdraw my objection.

Mr. SEAVER from the Committee on Printing, submitted the following Report:

Your Committee, to whom was referred the resolution for the reprinting of document No. 30, with the amendments of the committee thereto, and that the lines be numbered as in the case of bills reported in the Legislature, respectfully report in favor of the adoption of said resolution, and would recommend that all future reports of committees, embodying proposed amendments to the Constitution be printed in the same manner and therefore submit the following resolution:

*Resolved*, That document No. 30 be reprinted, with the amendments of the committee thereto, and that the lines be numbered as in the case of bills reported in the Legislature.

The question was put on agreeing with the report of the committee and it was declared carried.

Mr. SEAVER from the Committee on Printing, also submitted the following report:

Your committee, to whom was referred the question of printing the petition of the New York

State Workingmen's Assembly, praying that this Convention will engraft in the proposed new Constitution, to be prepared by this body, certain amendments set forth in said petition for the better protection of the interests of the workingmen of this State, in view of the importance of the reforms suggested, and of the duty of the State, by all just and feasible measures, either of constitutional provision or legislative enactment, to protect and advance the growing interests of this important and deserving class of its citizens, would respectfully report in favor of printing the usual number of copies of said petition; and while your committee are of the opinion that most of the reforms suggested by this intelligent assembly will fall more properly within the province of statutory enactment, yet we cannot refrain from expressing the hope that, while this Convention will not fail to make all proper provision for protecting and elevating the workingmen of this State, it will also so shape the Constitution to be prepared by them for submission to the people, that future Legislatures may find authority, under its beneficent provisions, to extend to this class the most ample protection and encouragement consistent with the best interests of all the people of this State.

The question was then put on agreeing with the report of the committee, and it was declared carried.

The PRESIDENT *pro tem*.—The Chair is informed by the Secretary that he desires unanimous consent, as Clerk of the House of Assembly, to make a report in compliance with a resolution of the Convention, dated June 26, calling for the titles of bills introduced in the Assembly relating to the city of New York.

No objection being made, the report was received and ordered to be printed.

Mr. BROOKS—I move that the document reported be referred to the Committee on Cities.

The PRESIDENT *pro tem*.—It will take that reference if there be no objection.

The PRESIDENT *pro tem*. announced the pending question to be on the amendment proposed by Mr. McDonald, by inserting in the substitute after the words "excluding from the right of suffrage" the words, "any person who shall violate any provision of this section."

Mr. WEED—My recollection is that a vote was taken on that subject, and it was lost.

The PRESIDENT *pro tem*.—The Secretary informs the Chair that such is not the case.

Mr. W. C. BROWN—I wish to offer an amendment to the amendment by adding at the end these words: "and every person violating the provision shall, on conviction, be deprived of the right of suffrage for such a number of years as the court shall determine." I think that would very effectually remove and prevent the evil spoken of.

Mr. McDONALD—I accept the amendment.

Mr. POND—It seems to me that it is objectionable to submit this question to any judge to determine how long an offender shall be deprived of the right of suffrage in consequence of his violating this law. It seems to me it would be a good deal better to permanently disfranchise him, and leave it to the pardoning power, or some other power, to relieve him of that penalty. For

the following: Laws shall be passed excluding from the right of suffrage all persons who may have been or may be convicted of bribery or any infamous crime, to prevent illegal voting, and to secure the purity and freedom of elections. All challenges shall be determined on the oath of the person challenged.

Mr. MASTEN—All I shall attempt to do on this occasion is to show to the Convention how this section will then read, and if gentlemen will run their eyes down to the end of line 12, they will then find that what is proposed to be added to this: "Laws shall be passed excluding from the right of suffrage all persons who may have been convicted of bribery or of any infamous crime, and to prevent illegal voting, and to secure the purity and freedom of elections; all challenges shall be determined on the oath of the person challenged;" and that will constitute, if adopted, the whole of section 2, unless further amended.

Mr. LIVINGSTON—I desire to offer a further amendment which I think the gentleman will accept.

The SECRETARY proceeded to read the amendment as follows:

"But all such laws shall be general and uniform in their requirements throughout the State."

Mr. MASTEN—I will accept that.

Mr. SMITH—I would like to say a single word, though, perhaps, it is unnecessary. I heartily approve of this amendment. As the section stands without it, the only provision it contains is the one allowing a challenge at the polls. There is no provision whatever left permitting the Legislature to pass any laws upon that subject, and something of the kind is absolutely necessary. It seems to me that the amendment offered judiciously supplies that defect.

Mr. ALVORD—I do not know but what I would have been perfectly willing to have gone for the amendment of the gentleman from Erie [Mr. Masten], as well as the amendment of the gentleman from Ontario [Mr. Folger], and I do not conceive that there is any particular difference, but it is an entirely different proposition now, as amended by the gentleman from Kings [Mr. Livingston], and I do not believe it is understood by the body of this Convention. Now, sir, I hold that so far as it regards all laws affecting the right to exercise the elective franchise they should in the main be uniform, while I hold at the same time there may be details in regard to the measuring out of the registry law, which would be applicable to incorporated cities and villages, that would not be applicable to the country, and would result in great damage and detriment to the country, whereas it would not affect injuriously the cities. Why, sir, take for instance the law as it at present exists in the cities of New York and Brooklyn. I am in favor of extending it to every incorporated city of the State, but I am not in favor of extending that uniformly to the rural portions of the State, for then it becomes onerous and burdensome, and it becomes in fact and truth, a stifling of the vote of the people. In a rural portion of this State, where men are known throughout the length and breadth of the district, each to the other, and where popu-

lation changes not from year to year, there is no necessity for an annual return of the registration by the appearance of the voter at the registry poll, in order to be registered. But in your cities, where there is a constant changing of population, tiding in one day and tiding out the next, there is a necessity for a registry every year, in order to determine who are entitled to vote, and for that reason I am opposed to the amendment of the gentleman from Erie [Mr. Masten], as amended by the gentleman from Kings [Mr. Livingston], because it contemplates having a strict unbroken law throughout the State, without permitting these necessary alterations and modifications according to the surrounding circumstances of the population which shall be entitled to vote. I trust the amendment as it is now, as amended by the gentlemen from Kings [Mr. Livingston], will be voted down by this Convention.

Mr. MATTICE—Cannot the question be divided? I call for a division of the question.

The PRESIDENT—The Chair understands the gentleman to call for a division of the question, so as to first include the proposition of the gentleman from Erie [Mr. Masten]. If there is no objection, the question will be so divided.

The question was then put upon the first portion of the amendment of Mr. Masten and it was declared lost.

Mr. LIVINGSTON—Since the main proposition has been voted down, the section is left as amended by the proposition of the gentleman from Ontario, and I do not see that it is necessary for me to offer this amendment, so I withdraw it.

The PRESIDENT—It cannot now be withdrawn, having been acted upon.

The question was then put upon the second portion of the proposition of Mr. Masten, being the amendment of Mr. Livingston, and it was declared lost.

Mr. EVARTS—I rise to suggest a verbal amendment to the clause under consideration as proceeding from the gentleman from Ontario [Mr. Lapham]. He provides that the Legislature "shall at its next session pass laws." I move to amend so that it may read: "Shall at its next session, and may from time to time thereafter pass laws."

The question was put on the amendment of Mr. Evarts, and it was declared carried.

Mr. McDONALD—I propose to amend by adding after the amendment of the gentleman from New York [Mr. Evarts] the following:

The SECRETARY proceeded to read the amendment as follows:

Amend the substitute by inserting after the words "excluding from the right of suffrage" the words "any person who shall violate any provision of this section."

Mr. McDONALD—The law as it now is provides that the only punishment for a person who violates this section is this—that he shall be deprived of his vote at that election. My amendment proposes that the Legislature shall enact a law which shall deprive him of the right of suffrage, so that any person who violates the first twelve lines shall be deprived by the Legislature of the right of suffrage, after being convicted of corrupting an elector. The object of it is this: a person will be unwilling to buy the vote of a venal

Mr. BICKFORD — I have reduced my amendment to writing. Amend section two by taking in after the word "promise," where it occurs the second time in line two, the words "or expect or intend."

Mr. VERPLANCK — I hope the amendment will not prevail. I suppose that when a person intends to commit an offense, and he concludes not to do it, it is not proper to charge him with doing what he may have intended to do but does not do.

The question was then put on the amendment of Mr. Bickford, and it was declared lost.

Mr. SPENCER — I offer the following amendment: Strike out in the seventh and eighth lines the word "inspector" and insert "officers authorized for that purpose shall;" and strike out the word "inspectors" where it next occurs and insert "officers." The object of the amendment is to provide for the contingency of the Legislature in reforming the election laws, not adopting the words "inspectors of election" as the persons to receive the vote. It may be competent for them to designate the supervisors, and the purpose of my amendment is to leave it general.

Mr. TAPPEN — I think the object of the gentleman [Mr. Spencer], could be accomplished by inserting after the word "inspector," the words "or officer authorized for that purpose."

Mr. SPENCER — I accept the amendment.

The question was then put upon the amendment of Mr. Spencer, and it was declared carried.

Mr. AXTELL — I move a reconsideration of the vote by which the amendment offered by me disfranchising deserters and certain other persons was declared lost, and I ask that the motion lie upon the table.

Mr. CONGER — I offer the following amendment to take the place of the first part, of the first sentence, so that it will read as follows: strike out all down to and including the word "contribute," and insert in lieu thereof "no person who shall receive, pay or contribute, or shall agree, or offer directly or indirectly so to receive, pay or contribute, as aforesaid." The object of this amendment is by the terms "agree, or offer directly or indirectly," to apply as well to one who pays as to the one who receives, and is to get rid of the distinction which I alluded to yesterday, between the offering to pay and the expectation of receiving. I think that with fair consideration it will be found to cover all the ground, and get rid of what may be a nice distinction between the expectation of receiving and the offering to pay, for there must be under any circumstances an agreement or offer, either direct or indirect.

The question was put on the amendment of Mr. Conger and it was declared lost.

Mr. SEYMOUR — I would like to inquire whether the exception to this provision, to wit, that which referred to the expense of circulating papers and documents has been stricken out?

The PRESIDENT *pro tem.* — The Chair will inform the gentleman that it does not now form a portion of the section.

Mr. SEYMOUR — I move then that it be inserted. I had supposed that this provision would remain in the section. My attention has just been called to the fact that it has been stricken out, all-

though it was sustained in committee after full discussion. I will not take up the time of the Convention by any discussion of the merits of the subject because they must be understood; but I think it would be desirable that it should be retained in the section. It merely excepts from the provision the legitimate expenses incurred by the printing and circulating of documents during the canvass.

Mr. GREELEY — The clause now moved by the gentleman [Mr. Seymour], to be re-inserted, has become totally unnecessary by the adoption of the amendment of the gentleman from Ontario.

Mr. SEYMOUR — If that is understood then the adoption of the provision—

The PRESIDENT *pro tem.* — Under the rule, the gentleman [Mr. Seymour], cannot again speak on the subject.

Mr. SEYMOUR — All I desire to say is that I withdraw my amendment.

Mr. COMSTOCK — I offer the following amendment by adding at the close of the section the following: "But no test oath founded on causes of exclusion from suffrage, other than those in this article mentioned, shall ever be prescribed." I had intended to offer this as an independent section of the article, but on the whole it seems to me that its proper place is at the close of the second section. I certainly entertain the opinion that without this amendment the Legislature never would have the power which the amendment is intended to prohibit forever. I think myself if the Legislature should undertake to disfranchise me on some ground of exclusion, from suffrage, other than the grounds mentioned in this article, I might appeal for my protection to the bill of rights, and to the Constitution of the United States. Such is my own opinion. I know, however, that others may differ from me upon that proposition. I know that legislative bodies might differ from me in regard to it. Some Legislature, less intelligent possibly than this body, in some hour of partisan passion and excitement, might enact a disfranchising test oath founded upon disqualifications or causes of exclusion other than those which this Convention has deliberately adopted. But my intention is simply to make clear and to fix forever, what I believe to be the undoubted meaning of this Convention in establishing a law of suffrage, which enumerates the causes of exclusion from that right. We certainly intend that no other cause of disfranchisement shall ever exist, and I simply propose to make that clear forever.

Mr. LAPHAM — I trust this amendment will not prevail. It is obvious enough that causes may hereafter exist which would require the imposition of an oath of that character in order to preserve the interests and rights of the people. It is well known to members of this Convention that an oath somewhat of the nature indicated by this amendment, was embodied in the organic act, by virtue of which the delegates to this Convention were chosen, and the authority of the legislature to pass and prescribe that oath has been denied by distinguished gentlemen of the State, and is now, I am informed, a question pending in the courts of the State. If this Convention should adopt a deliberate expression of this character it might look like the trial of that cause



and the establishment of a precedent which would have some influence in the trial of that issue. It is entirely unnecessary to incorporate in this section of the Constitution any such provision as that suggested in this amendment. If the question should be discussed at all, I respectfully submit for the consideration of the Convention, it will arise under the sixth section, which is before us, and where the form of the oath which is to be taken by the elector is prescribed, and for that reason it should not be appended as an amendment to this section.

Mr. COMSTOCK — That is the oath of office. I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the Secretary commenced the call of the roll.

Mr. CHURCH — Mr. President, I would like to inquire — if I am in order — I think I rose before the Clerk commenced the call. I wish to inquire of the gentleman from Ontario [Mr. Lapham], whether he holds that it is competent for the Legislature —

The PRESIDENT *pro tem.* — In the opinion of the Chair the gentleman from Orleans [Mr. Church] is out of order, as the Clerk had commenced the call of the roll before the gentleman arose.

Mr. CHURCH — I think I addressed the Chair first.

The PRESIDENT *pro tem.* — The Chair distinctly heard the call of the Clerk before it recognized the gentleman.

Mr. VAN COTT — I hope the gentleman from Orleans [Mr. Church] will have unanimous consent —

A DELEGATE — I object. Let us have a vote.

The call of the roll was proceeded with on the amendment of Mr. Comstock, and it was declared lost by the following vote:

*Ayes* — Messrs. Barnard, Barto, E. Brooks, Cassidy, Champlain, Chesebro, Church, Clinton, Cochran, Comstock, Conger, Corning, Daly, Gross, Hatch, Jarvis, Kernan, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Paige, A. J. Parker, Potter, Robertson, Rogers, Rolfe Roy, Seymour, Tappen, S. Townsend, Tucker, Veeder, Verplanck, Weed, Wickham — 38.

*Noes* — Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Axtell, Baker, Ballard, Barker, Beadle, Beckwith, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Clark, Corbett, C. C. Dwight, T. W. Dwight, Ely, Endress, Farnum, Ferry, Field, Flagler, Fowler, Francis, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hammond, Houston, Huntington, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Opdyke, Prindle, Prosser, Reynolds, Root, Rumsey, Schoonmaker, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams — 65.

Mr. E. A. BROWN — I move to amend by striking out the clause which provides that all challenges shall be determined upon the oath of the challenger.

The PRESIDENT *pro tem.* — The Chair is of the opinion that that can only be reached by a motion to reconsider the vote which placed the

clause in the section, it just having been placed in the section by action of the Convention.

Mr. C. C. DWIGHT — A motion to reconsider has been made already, and it lies on the table.

The PRESIDENT *pro tem.* — Upon either ground the motion of the gentleman is not now admissible. The question now is on the adoption of the second section as amended.

Mr. LOEW — I believe the first section was not adopted as amended.

The PRESIDENT *pro tem.* — The Chair is informed by the Secretary that the gentleman's statement is correct. The Chair will therefore follow the course pursued by his predecessor. The next question is upon the third section, which will be read by the Secretary.

Mr. VAN CAMPEN — I call up my motion to reconsider.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the Convention must go through with all the sections, and then the motion to reconsider can be taken up, and not till then.

The SECRETARY proceeded to read the third section, as follows:

SEC. 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the service of the United States, nor while engaged in the navigation of the waters of this State, of the United States, or of the high seas, nor while kept in any almshouse or other asylum, at the public expense, nor while confined in any public prison. And the Legislature shall prescribe the manner in which electors absent from their homes in time of war, in the actual military or naval service of this State, or of the United States, may vote, and shall provide for the canvass and return of their votes.

Mr. CHESEBRO — I desire to offer an amendment, which I find is left out of this section, which, being contained in the Constitution of 1846, I presume was left out through inadvertence by the committee.

The SECRETARY read the amendment, as follows:

"Insert after the word 'seas' in line five, section three, the words, 'nor while a student of any seminary of learning.'"

Mr. T. W. DWIGHT — I hope that clause will not be inserted. A similar provision came up before the Supreme Court of California, which State had clauses of this kind in its Constitution, as we have in ours, and it was decided it had no effect whatever, that the question of residence was to be determined on other grounds than whether a person was in college or not. Residence depends on the fact and the intention, and should be decided on general principles. Such a clause only tends to complicate the decision of questions arising before inspectors, and at the same time it is inoperative, as the Supreme Court of California decided.

Mr. HARRIS — I hope this clause will be restored. It has been in the Constitution since 1846, and has received a practical construction. If it is left out now, it may be misconceived. I have a little feeling about it. My first vote, after returning home, after being two years absent in college, was challenged on the ground that I had lost my

residence. I felt reluctant to swear my vote in because I had not been at home, but I did so. I know now that I did right. To leave out this clause might create some embarrassment, and certainly it can do no harm to leave it in.

Mr. GREELEY—The committee very carefully considered this matter, and decided that a man's residence was what we could not here determine. Here is a young man who goes to school, perhaps, his home is where he has lived all his lifetime, and his residence is there. He has a right to go home and vote. Here is another young man who is sent to college, who has no other home than where he is living as a student; he makes that place his home. He may be there four years, having no other home than that; and, if you restore this article, he cannot vote at all. I hope no such proscription ever will be permitted, of those who are trying to get an education. We have decided that ignorance shall not disqualify a man from voting, and I trust we shall not enact a provision which shall disqualify a person because he is seeking an education. I hope this clause therefore, will be allowed to stand.

Mr. ANDREWS—I am in favor of the restoration of this clause, and I do not think the suggestion of the gentleman from Westchester [Mr. Greeley] is well founded, because, in the case which he last supposes, if a student had no other residence than where he is attending college, and if the intention was with him to remain in that place although he might be a student, there, he would have a right notwithstanding the insertion of this clause to vote there.

Mr. MERRILL—Does the gentleman understand that by the provision of the present Constitution a man may gain a residence by being a student in college?

Mr. ANDREWS—Oh, unquestionably. It simply determines that, while a young man is at school, the fact of his being at school shall not affect the question of his residence. That, as I understand it, is the entire scope of the section. Now, striking out this section is not objectionable on the ground taken as I understand it, in the minority report, because if struck out then it would not allow students temporarily away from home at school to vote in the place where they might happen to be; but I agree with the gentleman from Albany [Mr. Harris], that this has furnished heretofore the rule in such cases, and it had better not be abandoned, although I do not suppose it protects any substantial right, whether it is in or out.

The question was then put on the amendment of Mr. Chesebro, and it was declared adopted.

Mr. RUMSEY—I desire to call the attention of the Convention to the last clause of the section. It provides that the Legislature shall prescribe the manner in which the electors engaged in the military and naval service of the United States shall vote. The first section prescribes that all electors shall vote in the town where they reside at the time of the election, and not elsewhere. We have made a mistake in striking out the proviso that was in that first section, and I propose to remedy that by inserting these words: Add after the word "elsewhere" line 6, section 1, "except as hereinafter provided," and that will give it effect.

The PRESIDENT *pro tem.*—The Chair will inform the gentleman [Mr. Rumsey] that his amendment will be in order when amendments generally are announced.

Mr. VAN CAMPEN—Before we proceed to the next section I want now to move a reconsideration of the vote just taken, by which the language was inserted in reference to students attending the seminaries of learning.

Mr. C. C. ALLEN—I hope the gentleman will withdraw his motion, and I move that for the present it lie on the table.

The PRESIDENT *pro tem.*—Objection being made, it must lie on the table under the rule.

Mr. McDONALD—In line three I ask if the words "or of this State" are not omitted before the words "the United States." In line nine it is provided that "the Legislature shall prescribe the manner in which electors, absent from their homes in time of war in the actual military or naval service of this State or of the United States, may vote," while in the upper clause they only provide for those in the service of the United States. I, therefore, for the purpose of testing that, propose to amend by inserting in line three, before the words "United States," "or of this State," so that it will read as follows, "for the purpose of voting no person shall be deemed to have gained or lost a residence by reason of his presence or absence while employed in the military service of this State or of the United States."

The PRESIDENT—The Chair would ask the gentleman whether he has reference to the first section?

Mr. McDONALD—This has reference to the third section, now under consideration.

Mr. CHESEBRO—I would like to ask the gentleman where the troops would be in the service of the State of New York outside of the State?

Mr. McDONALD—I do not know that they would be outside of the State, but they could vote where they were instead of being compelled to come home to vote. One thing or the other is certain, either those words ought to be inserted in the first clause, or the latter clause ought to be corrected, for that provides for absence from their homes in the actual military or naval service of this State, or of the United States. One or the other ought to be corrected, and I see no reason why a person who is engaged in the military service of this State, when he is in a different part of the State, should not be allowed to vote.

Mr. AXTELL—The gentleman evidently misapprehends the meaning. This line does not refer to the military service. It refers to the fact that a man may be absent from the State in the service of the United States other than the military service.

The question was then put on the amendment of Mr. McDonald, and, on a division, it was declared carried, by a vote of 45 to 37.

Mr. LANDON—I offer the following amendment:

"Insert in line ten after the words 'United States,' the words, 'or in a seminary of learning out of the State.'"

As students while attending a seminary of learning do not lose their residence, I do not

and the establishment of a precedent which would have some influence in the trial of that issue. It is entirely unnecessary to incorporate in this section of the Constitution any such provision as that suggested in this amendment. If the question should be discussed at all, I respectfully submit for the consideration of the Convention, it will arise under the sixth section, which is before us, and where the form of the oath which is to be taken by the elector is prescribed, and for that reason it should not be appended as an amendment to this section.

Mr. COMSTOCK — That is the oath of office. I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the Secretary commenced the call of the roll.

Mr. CHURCH — Mr. President, I would like to inquire — if I am in order — I think I rose before the Clerk commenced the call. I wish to inquire of the gentleman from Ontario [Mr. Lapham], whether he holds that it is competent for the Legislature —

The PRESIDENT *pro tem.* — In the opinion of the Chair the gentleman from Orleans [Mr. Church] is out of order, as the Clerk had commenced the call of the roll before the gentleman arose.

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Mr. VAN COTT — I hope the gentleman from Orleans [Mr. Church] will have unanimous consent —

A DELEGATE — I object. Let us have a vote.

The call of the roll was proceeded with on the amendment of Mr. Comstock, and it was declared lost by the following vote:

*Ayes* — Messrs. Barnard, Barto, E. Brooks, Cassidy, Champlain, Chesebro, Church, Clinton, Cochran, Comstock, Conger, Corning, Daly, Gross, Hatch, Jarvis, Kernan, A. R. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Paige, A. J. Parker, Potter, Robertson, Rogers, Rolfe Roy, Seymour, Tappen, S. Townsend, Tucker, Veeder, Verplanck, Weed, Wickham — 38.

*Noes* — Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Axtell, Baker, Ballard, Barker, Beadle, Beckwith, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Clark, Corbett, C. C. Dwight, T. W. Dwight, Ely, Endress, Farnum, Ferry, Field, Flagler, Fowler, Francis, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hammond, Houston, Huntington, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Opdyke, Prindle, Prosser, Reynolds, Root, Rumsey, Schoonmaker, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams — 65.

Mr. E. A. BROWN — I move to amend by striking out the clause which provides that all challenges shall be determined upon the oath of the challenger.

The PRESIDENT *pro tem.* — The Chair is of the opinion that that can only be reached by a motion to reconsider the vote which placed the

clause in the section, it just having been placed in the section by action of the Convention.

Mr. C. C. DWIGHT — A motion to reconsider has been made already, and it lies on the table.

The PRESIDENT *pro tem.* — Upon either ground the motion of the gentleman is not now admissible. The question now is on the adoption of the second section as amended.

Mr. LOEW — I believe the first section was not adopted as amended.

The PRESIDENT *pro tem.* — The Chair is informed by the Secretary that the gentleman's statement is correct. The Chair will therefore follow the course pursued by his predecessor. The next question is upon the third section, which will be read by the Secretary.

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Mr. CHESEBRO — I desire to offer an amendment, which I find is left out of this section, which, being contained in the Constitution of 1846, I presume was left out through inadvertence by the committee.

The SECRETARY read the amendment, as follows:

"Insert after the word 'seas' in line five, section three, the words, 'nor while a student of any seminary of learning.'"

Mr. T. W. DWIGHT — I hope that clause will not be inserted. A similar provision came up before the Supreme Court of California, which State had clauses of this kind in its Constitution, as we have in ours, and it was decided it had no effect whatever, that the question of residence was to be determined on other grounds than whether a person was in college or not. Residence depends on the fact and the intention, and should be decided on general principles. Such a clause only tends to complicate the decision of questions arising before inspectors, and at the same time it is inoperative, as the Supreme Court of California decided.

Mr. HARRIS — I hope this clause will be restored. It has been in the Constitution since 1846, and has received a practical construction. If it is left out now, it may be misconceived. I have a little feeling about it. My first vote, after returning home, after being two years absent in college, was challenged on the ground that I had lost my



the State, which would be about one hundred thousand, and if it is one-fifth, you have two hundred thousand. If they lose two days in attendance, at two dollars a day, there would be four hundred thousand dollars wrung from the industrial interests of the State, and for what? Because, perhaps, some vagabond is enabled in the city of New York to run the outposts of the commissioned police, the loyal leagues, the clubs and the vigilance committees, and put in a vote, this visitation is put upon the tax payers and upon the innocent citizens. I warn gentlemen if such a provision as this is incorporated into the organic law, it will raise a storm of indignation throughout the State and country and the rural districts where the people are honorable and are guilty of no crime, that will sweep this Constitution out of existence. Increase the penalty for the crime; throw other safeguards around the proof that shall be offered on election day, but do not visit nor let the indiscriminate hand of vengeance lump together the innocent and the guilty in this enormous infliction.

Mr. ANDREWS—I trust this Convention is not to be frightened from its propriety by the threats which have been heard from the gentleman from Allegany [Mr. Champlain], because if the only storm which the work of this Convention has to withstand, is a storm to be raised by a provision for a fair registration of the voters of this State, then I think the work of this Convention can pass that ordeal. And, sir, while I am in favor of all proper and legitimate economy in carrying on the operations of this State, that economy is most expensive which shall refuse to provide the means necessary to the ascertainment of the persons who are entitled to exercise the elective franchise, the dearest right possessed by citizens of this State, and at the same time one which should be most vigilantly and sacredly guarded. I do not understand that the estimates of the gentleman of the expense of these proceedings are at all in accordance with the fact. But whether so or not, I submit that under color of regard for the laboring people of this State, we are not to allow the system of franchise to be invaded by the frauds of persons who might desire that it should be exercised by those who are destitute of the proper qualifications. I trust, sir, that this present provision will be retained.

Mr. MERRILL—I submit the following amendment to the amendment.

The SECRETARY proceeded to read the amendment, as follows:

Substitute for the last clause of section four, in lines seven and eight, the following: "But such laws shall be uniform in their application to all the cities in the State."

Mr. E. BROOKS—I hope, sir, there is to be none of this discrimination as between city and country. I heard with a good deal of regret this morning, from the gentleman now occupying the chair [Mr. Alvord]—the acting President of this body—remarks like this: that a registry law was very well for villages and cities, but very improper for the country districts. Sir, I do not know what ideas the gentleman has of the cities of this State.

The PRESIDENT *pro tem.*—Will the gentleman [Mr. E. Brooks] permit the Chair to state that he

entirely misunderstood what was said by the member now occupying the chair when on the floor? He used no such language.

Mr. E. BROOKS—I know I understood the present occupant of the chair [Mr. Alvord] to say this morning that a registry might be convenient to villages and cities, but that it was not proper for the rural districts.

The PRESIDENT *pro tem.*—The Chair wishes to inform the gentleman that he is mistaken, as no such language was used.

Mr. E. BROOKS—Then I am glad I did not rightly understand the remarks of the President, for they grated rather harshly on my ears. But it is not the first time that discriminations of this kind between the city and country have been attempted, and these propositions remind me of that old remark of the poet who said, "God made the country and man made the town." Now, sir, as between the town and the country, whatever may be the opinion of gentlemen from the country, taking the population at large, I think there is about as much virtue in the city as in the country. I remember a resolution like this, said to have been adopted some years ago, by that class of jurists which prevailed very extensively in this country, and it read something like this:

"Resolved, first, That the earth, and the fullness thereof, belongs to the saints.

"Resolved, secondly, That we are the saints."

The same discrimination seems to be very often made between gentlemen residing in the city and those residing in the country, and I protest against it, and insist that if you are to have registry laws, if you are to embarrass the people of the city by these discriminations, they ought to apply just as much to the rural districts as they do to the citizens of the city. The registry law is a subject of great inconvenience and great expense; it imposes heavy burdens upon the tax payers, and heavier burdens upon the laboring classes of people, who have not so much leisure as gentlemen have who reside in the country. There are many more opportunities for gentlemen residing in the rural districts to avail themselves of the opportunities of registry, than there are in the city, for the reasons I have named. I hope the original provision in the clause reported by the Committee on Suffrage will be insisted upon, and that the law will be uniform throughout the State.

Mr. BALLARD—I understood the President *pro tem.* [Mr. Alvord] in the remarks he made, to have reference to the registry laws as they now exist, in which the personal attendance of electors is required in the city and incorporated villages, in order to get their names upon the registry, while in rural districts, inspectors of elections are required to register the names of the voters as they find them on the poll lists of the preceding year. I understood the gentleman [Mr. Alvord] in his remarks to insist that the law should be adapted to the cities and the rural districts as they now are. In one case, a personal attendance is required to see that their names are upon the registry. In the country the inspectors use the poll lists of the last year, and enter the names there, and where the election district runs into an incorporated village, there they must see to it that their names are on the list before election day, but in other election



districts they may be entered on the oath of the elector on election day.

Mr. E. BROOKS—Why should you compel the personal attendance of an elector in the city to have himself placed on the registry, and not impose the same burden on the elector in the country?

Mr. BALLARD—That has been very well answered by the gentleman from Westchester [Mr. Greeley], that in crowded cities there is a necessity for personal attendance, because of numbers and want of acquaintance among the persons living contiguous, in order to ascertain that they are legal voters in the district. In the country districts every man knows his neighbor, and so extensive is the acquaintance that the right of every person in a town to vote is known by those at the polls.

Mr. TAPPEN—How is an elector in the rural districts to know that the inspectors have placed his name on the registry list without a personal inspection by himself?

Mr. BALLARD—He may not know the fact unless he sees it; but an elector's name, if on the poll list, would not be left off by an inspector unless through inadvertency. It is well known that the country election districts sometimes embrace a territory of five or ten miles. They are of different dimensions; and to have a uniform law, requiring every man to go and see if his name is registered six days before election—in the country as well as in the city—would be a most embarrassing and oppressive enactment. In this city of Albany, and in New York and Brooklyn, men live within a stone's throw, or certainly within two or three minutes' walk of the polls of an election district, and they can go without difficulty and see that their names are registered. To require that in the country would involve perhaps a five miles' journey, involving much expense; which consideration has been alluded to by the gentlemen from Allegany [Mr. Champlain], and that journey would have to be repeated over hills and through valleys six days after the registry, on the day of election. I hope that the last line will be stricken out and amended in the manner proposed by the gentleman from Wyoming [Mr. Merrill].

Mr. BARNARD—I hope that we shall not change the section as it was reported by the Committee on the Right of Suffrage. A fair registry law no one can object to, because it enables the inspectors, before the day of election, to ascertain who are the voters on the day of election, and prevent those delays which otherwise would occur when the votes were being taken. But a registry law should be uniform throughout the State, and ought not require the personal attendance of the voter in the cities any more than in the country. The cities of New York and Brooklyn, you will bear in mind, are commercial cities, and they have in them a great many voters—seafaring men—who are nearly all the time at sea, and if when the registers sit six days before the election these men happen to be at sea, they cannot be registered to vote because they cannot attend personally, and thereby their votes are lost; and the right of suffrage is denied to them. I hope that we will have a uniform law, and have it as it existed in this State before the year 1866.

Mr. MERRILL—The object of a registry law, as I understand it, is to prevent frauds in the elections, by enabling citizens to ascertain, in the only possible way in an entirely proper manner, who are entitled to vote. The object of my amendment is to require a uniformity throughout the cities of the State, so as to prevent any unjust discrimination against citizens similarly situated, and leave the Legislature to make such laws as it shall deem wise. If it is not manifest to gentlemen on this floor that the same class of requirements are not applicable to the population of the cities which would properly apply to citizens in the rural districts, then nothing I can say, or that anybody else could say, would bring them to that point of view. Laws are uniform when they apply to populations situated in like manner.

Mr. E. BROOKS—Under the existing practice, a man who resides in the rural district—

The PRESIDENT *pro tem.*—The Chair is of the opinion that the gentleman is out of order, he having already spoken on the amendment.

Mr. E. BROOKS—I wish to ask the gentleman whether there is not this discrimination between voters of the country and the city, that a man residing in the country is permitted to vote on the day of election, while in the city he must be registered before he can vote?

Mr. MERRILL—In reply to that I would say that I fail to discover anything in this article, as it would be amended by the proposition I have submitted, which will make any unjust distinctions between the population of cities and country districts. It is entirely a matter of legislation. The Legislature, as I understand, can now make laws which shall be uniform, if that is deemed to be the best manner to secure the object of registration. It would likewise be within the limits of legislation, under this section, to do away with the requirements of personal attendance in cities, or to impose such a requirement upon the country, as the Legislature should deem best to secure the ends of the law.

Mr. VAN CAMPEN—Mr. President—

The PRESIDENT *pro tem.*—The Chair would inform the gentleman that two gentlemen on each side have already spoken on the amendment.

Mr. VAN CAMPEN—I understood that the rule only applied to the consideration of the first section.

The PRESIDENT *pro tem.*—It applies to the report of the Committee on the Right of Suffrage.

Mr. TAPPEN—Does the Chair mean to state that four gentlemen have spoken on the amendment of the gentleman from Wyoming [Mr. Merrill]?

The PRESIDENT *pro tem.*—Two have spoken on each side of the amendment.

The question was then announced on the amendment of Mr. Merrill.

Mr. CHESEBRO—On that I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. KINNEY—I understood the amendment of the gentleman from Allegany [Mr. Champlain] was a substitute for the first proposition of this section, while the amendment offered by the gen-

tleman from Wyoming [Mr. Merrill] is to insert something between the seventh and eighth lines of the printed amendment reported by the Committee of the Whole.

The PRESIDENT *pro tem.*—The Chair so understands it.

Mr. KINNEY—It is not an amendment to the amendment.

The PRESIDENT *pro tem.*—The Chair understands that there are two amendments to the same section, and as two amendments are pending they will not admit of a proposition for any further amendment?

The SECRETARY proceeded with the call of the roll.

The name of Mr. Bickford was called.

Mr. BICKFORD—I ask to be excused from voting on the ground that my attention has been diverted from the question.

The question was put on granting the request of Mr. Bickford to be excused from voting, and it was declared lost.

Mr. BICKFORD—Then I vote "aye."

Mr. C. C. DWIGHT—I ask to be excused from voting on the pending amendment, and if permitted will briefly state my reasons for making the request. I am opposed, sir, to enacting any registry law in the Constitution of this State. The first clause of this article, as reported, is precisely the same in this respect as the provision of the present Constitution, which on the subject of registry has worked well. I propose, when it shall be in order, to move to strike out all after the first clause of section 4. If I am not excused from voting I shall vote "no" upon the proposition.

The name of Mr. Kinney was called.

Mr. KINNEY—I beg leave to be excused from voting. The amendment offered by the gentleman from Allegany [Mr. Champlain] is a substitute for the fourth section, while the amendment offered by the gentleman from Wyoming [Mr. Merrill] provides for the insertion of certain words in the seventh and eighth lines of the section, reported by the Committee of the Whole. I cannot vote intelligently upon the question pending, because if the amendments were carried the whole matter would be unintelligible to this Convention.

The question was then put on excusing Mr. Kinney, and it was declared lost.

Mr. KINNEY—Then I vote "no." That is the safest way I know of.

The name of Mr. M. I. Townsend was called.

Mr. M. I. TOWNSEND—I ask to be excused from voting for this reason. My conviction would lead me to vote "no" upon this subject, but my colleague Mr. Armstrong, would be of a different opinion, and we agreed that we would pair on this question, and with the consent of the Convention I wish to be excused from voting.

There being no objection Mr. M. I. Townsend was excused.

The name of Mr. Van Campen was called.

Mr. VAN CAMPEN—I beg to be excused from voting on this question for the reason, that the insertion of the clause here would seem to destroy its force. It provides that the laws shall be uniform in respect to cities, and then again it says such registry laws shall be uniform in their

requirements throughout the State. I have a very great objection to making any change in this clause whatever, and under the circumstances I cannot well vote for the change proposed, as it would make the clause unintelligible. I think it is a very grave mistake to make any change at all.

Mr. MERRILL—I call the gentleman to order. He is arguing the question instead of giving the reasons for being excused from voting.

The PRESIDENT *pro tem.*—The Chair is of the opinion the point of order is well taken.

Mr. VAN CAMPEN—Then I vote "no."

Mr. BICKFORD—I wish to change my vote, and vote no.

The PRESIDENT *pro tem.*—The Chair will state that under a misapprehension, it permitted the gentleman from Cayuga [Mr. C. C. Dwight] to be recorded in the negative. The Chair is informed that the rule which has obtained heretofore in this body is that persons can only be excused from voting by the consent of the Convention; and, therefore, it feels it its duty to put the question of excusing the gentleman from Cayuga [Mr. C. C. Dwight] from voting, to the vote of the Convention.

Mr. C. C. DWIGHT—I withdrew my request to be excused.

The PRESIDENT *pro tem.*—The Chair is aware of that, but in its opinion under the former ruling, the gentleman could not be excused from voting without the consent of the Convention.

There being no objection, the question was put on excusing Mr. C. C. Dwight from voting, and it was declared lost.

Mr. C. C. DWIGHT—I vote in the negative.

The call of the roll was proceeded with, and the amendment of Mr. Merrill was declared lost by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Ballard, Barker, Beadle, Beckwith, Bowen, E. P. Brooks, W. C. Brown, Case, T. W. Dwight, Ely, Endress, Farnum, Flagler, Fowler, Frank, Fuller, Goodrich, Gould, Grant, Hammend, Hand, Houston, Krum, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Prindle, Prosser, Root, Rumsey, Sherman, Spencer, Stratton, Van Cott, Wakeman—45.

*Noes*—Messrs. Artell, Barnard, Barto, Bickford, E. Brooks, Cassidy, Champlain, Chesebro, Clinton, Cochran, Comstock, Conger, Corning, Daly, C. C. Dwight, Field, Francis, Greeley, Gross, Hardenburgh, Harris, Jarvis, Kernan, Kinney, Landon, A. R. Lawrence, Loew, Lowrey, Magee, Masten, Morris, Paige, A. J. Parker, Reynolds, Robertson, Rogers, Rolfe, Roy, Schoonmaker, Seymour, Tappen, S. Townsend, Van Campen, Veeder, Verplanck, Wales, Weed, Wickham—50.

Mr. CORBETT—I move to strike out from line seven, commencing at the word "but" to and including the word "State" on the eighth line.

Mr. KINNEY—I would ask the reading of the amendment of the gentlemen from Allegany [Mr. Champlain], as amended on the motion of the gentleman from Wyoming [Mr. Merrill].

The PRESIDENT *pro tem.*—The Chair would inform the gentleman [Mr. Kinney], that the amendment of the gentleman from Wyoming [Mr. Merrill], was lost.

districts they may be entered on the oath of the elector on election day.

Mr. E. BROOKS — Why should you compel the personal attendance of an elector in the city to have himself placed on the registry, and not impose the same burden on the elector in the country?

Mr. BALLARD — That has been very well answered by the gentleman from Westchester [Mr. Greeley], that in crowded cities there is a necessity for personal attendance, because of numbers and want of acquaintance among the persons living contiguous, in order to ascertain that they are legal voters in the district. In the country districts every man knows his neighbor, and so extensive is the acquaintance that the right of every person in a town to vote is known by those at the polls.

Mr. TAPPEN — How is an elector in the rural districts to know that the inspectors have placed his name on the registry list without a personal inspection by himself?

Mr. BALLARD — He may not know the fact unless he sees it; but an elector's name, if on the poll list, would not be left off by an inspector unless through inadvertency. It is well known that the country election districts sometimes embrace a territory of five or ten miles. They are of different dimensions; and to have a uniform law, requiring every man to go and see if his name is registered six days before election — in the country as well as in the city — would be a most embarrassing and oppressive enactment. In this city of Albany, and in New York and Brooklyn, men live within a stone's throw, or certainly within two or three minutes' walk of the polls of an election district, and they can go without difficulty and see that their names are registered. To require that in the country would involve perhaps a five miles' journey, involving much expense; which consideration has been alluded to by the gentlemen from Allegany [Mr. Champlain], and that journey would have to be repeated over hills and through valleys six days after the registry, on the day of election. I hope that the last line will be stricken out and amended in the manner proposed by the gentleman from Wyoming [Mr. Merrill].

Mr. BARNARD — I hope that we shall not change the section as it was reported by the Committee on the Right of Suffrage. A fair registry law no one can object to, because it enables the inspectors, before the day of election, to ascertain who are the voters on the day of election, and prevent those delays which otherwise would occur when the votes were being taken. But a registry law should be uniform throughout the State, and ought not require the personal attendance of the voter in the cities any more than in the country. The cities of New York and Brooklyn, you will bear in mind, are commercial cities, and they have in them a great many voters—seafaring men—who are nearly all the time at sea, and if when the registers sit six days before the election these men happen to be at sea, they cannot be registered to vote because they cannot attend personally, and thereby their votes are lost; and the right of suffrage is denied to them. I hope that we will have a uniform law, and have it as

—as it was in this State before the year 1866.

Mr. MERRILL — The object of a registry law, as I understand it, is to prevent frauds in the elections, by enabling citizens to ascertain, in the only possible way in an entirely proper manner, who are entitled to vote. The object of my amendment is to require a uniformity throughout the cities of the State, so as to prevent any unjust discrimination against citizens similarly situated, and leave the Legislature to make such laws as it shall deem wise. If it is not manifest to gentlemen on this floor that the same class of requirements are not applicable to the population of the cities which would properly apply to citizens in the rural districts, then nothing I can say, or that anybody else could say, would bring them to that point of view. Laws are uniform when they apply to populations situated in like manner.

Mr. E. BROOKS — Under the existing practice, a man who resides in the rural district —

The PRESIDENT *pro tem.* — The Chair is of the opinion that the gentleman is out of order, he having already spoken on the amendment.

Mr. E. BROOKS — I wish to ask the gentleman whether there is not this discrimination between voters of the country and the city, that a man residing in the country is permitted to vote on the day of election, while in the city he must be registered before he can vote?

Mr. MERRILL — In reply to that I would say that I fail to discover anything in this article, as it would be amended by the proposition I have submitted, which will make any unjust distinctions between the population of cities and country districts. It is entirely a matter of legislation. The Legislature, as I understand, can now make laws which shall be uniform, if that is deemed to be the best manner to secure the object of registration. It would likewise be within the limits of legislation, under this section, to do away with the requirements of personal attendance in cities, or to impose such a requirement upon the country, as the Legislature should deem best to secure the ends of the law.

Mr. VAN CAMPEN — Mr. President —

The PRESIDENT *pro tem.* — The Chair would inform the gentleman that two gentlemen on each side have already spoken on the amendment.

Mr. VAN CAMPEN — I understood that the rule only applied to the consideration of the first section.

The PRESIDENT *pro tem.* — It applies to the report of the Committee on the Right of Suffrage.

Mr. TAPPEN — Does the Chair mean to state that four gentlemen have spoken on the amendment of the gentleman from Wyoming [Mr. Merrill]?

The PRESIDENT *pro tem.* — Two have spoken on each side of the amendment.

The question was then announced on the amendment of Mr. Merrill.

Mr. CHESEBRO — On that I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. KINNEY — I understood the amendment of the gentleman from Allegany [Mr. Champlain] was a substitute for the first proposition of this section, while the amendment offered by the gen-



which requires that the registry laws shall be uniform in their requirements throughout the State. The justice and equity of this provision are so apparent, that it seems to me strange that it should encounter any opposition in a body composed of gentlemen who profess to have come together for the purpose of *amending* the fundamental law of the State, in order to secure to the people thereof a more perfect system of government. It must be clear to every one that without such a provision in the Constitution as the one now under discussion, the Legislature would have the power to virtually disfranchise the residents of any particular portion of the State, by annexing to their right to vote certain conditions from which the rest of the people would be exempt. The existing registry laws are proof of what I assert. It may not be known to all the members of this Convention that at the present time the residents in the cities and incorporated villages of this State are deprived of their right to vote unless they shall have been registered a certain number of days before the election, while no such restriction is placed upon the inhabitants of the country. Again, in the cities of New York and Brooklyn, no voter can be registered unless he appears *in person* before the board of registers, on the days indicated by law. No matter what knowledge the registers may have as to a person's place of residence and right to vote, no matter how conclusively the facts entitling such person to vote may be proved, he must appear before the board at the designated time and apply to have himself registered, and he must renew the application every time he desires to vote; so that in those two cities every one who has been unavoidably prevented by sickness or otherwise from applying *in person* to have himself registered must lose his vote, and *such is not the case in any other part of the State*. Can any one pretend, then, that under existing laws the inhabitants of New York, Brooklyn and other cities exercise the right of suffrage on equal terms with the people in the country? Certainly not. Since I have come here I have heard a great deal about the right of the black man to vote on the same terms as the white man, and I supposed of course that no one would deny that the white men of this State had the right to vote on equal terms with each other, without reference to their residence; but I find that some of those gentlemen who have been the most earnest in their efforts to place the black man on an equality with the white man in respect to suffrage, are now equally warm in advocating that a discrimination should be made on the same subject between the white men of the State. I take it for granted that a proposition to incorporate in the Constitution a provision imposing on the voters in cities qualifications different from those required of voters in the country would meet with very little favor in this Convention, and yet it is proposed by some gentlemen to confer upon the Legislature the power to do indirectly what we would not be willing to do directly. I beg the members of this Convention to be at least consistent on this subject of suffrage. In a preceding section they have just conferred the elective franchise on every male citizen to be exercised upon terms of perfect

equality, and what becomes of that *equality* if the Legislature is now authorized to enact laws imposing restrictions upon the right to vote of a *portion only* of the inhabitants of this State, or making discriminations concerning the exercise of the elective franchise between the residents of the different parts of this State. In behalf of my constituents, therefore, I protest against giving such power to the Legislature under any pretext whatever.

Mr. LAPHAM — I am in favor of the amendment that the gentleman from Tioga [Mr. Kinney] proposed to the amendment offered by the gentleman from Allegany [Mr. Champlain]. I regard the amendment striking out the last clause of section three as reported by the committee as desirable, for the reason that that provision is entirely unnecessary. The proposition of the gentleman from Allegany [Mr. Champlain] struck me with surprise, for I have found that class of gentlemen in this body who sympathized in sentiment with him, extremely solicitous through the whole of this debate, to incorporate into the provisions of this article every form of expression which might in any manner describe the offense of infidelity on the part of the elector, and I took courage in believing that gentlemen were earnest in their desire to purify the ballot-box, and prevent the possibility of corruption in our elections. I confess my surprise that, when we have now come down to the last and crowning act, which of all others is best calculated, as experience has shown, to preserve the purity of the elective franchise, the gentleman from Allegany proposes to strike it out altogether. I will not, from this simple motion on his part, draw the inference that the intelligent gentlemen of this Convention who have thus indicated their desire to prevent the possibility of corruption at the polls are insincere, or have been insincere in those professions. I will wait until we take the vote on the proposition of the gentleman from Allegany [Mr. Champlain], and let that determine whether they are in earnest in having all the safeguards placed upon the ballot-box which experience has proved were so useful and efficacious in preserving the purity of elections. I trust that the amendment which has last been offered will not prevail, for the reason that it is entirely useless as a provision in the Constitution, that whole matter being subject to regulation by legislative action. I hope the amendment proposed by the gentleman from Allegany [Mr. Champlain] will meet with such a response from this Convention as will show him, and show the people at large, that the desire to put provisions in the Constitution to prevent corruption which has been so universally manifested thus far, is a real and earnest desire on the part of every member of this Convention.

Mr. KERNAN — I desire to say a word in opposition to the amendment of the gentleman from Tioga [Mr. Kinney] to strike out the clause in this section which provides that the registration shall be uniform; and I will not assume, sir, as the gentleman from Ontario [Mr. Lapham] seems inclined on all occasions to assume, that every man who may differ with me on this subject is less honest or less desirous of having the purity of the ballot-box preserved than myself, or those with whom I



Mr. WEED—This question will of necessity be taken up and reconsidered when the Convention is full. I move, therefore that the Convention do now adjourn.

The question was then put on the motion of Mr. Weed, and it was declared carried, on a division, by a vote of 75 to 37.

So the Convention stood adjourned.

MONDAY, July 29, 1867.

The Convention met pursuant to adjournment at half-past seven o'clock.

The President *pro tem.* [Mr. FOLGER] in the chair.

Prayer was offered by the Rev. EDWARD BAYARD.

The Journal of Friday was read by the SECRETARY.

Mr. GREELEY—I understand that the amendment moved by my colleague from Westchester [Mr. Tappen] striking out the words "right of suffrage" wherever it occurs, and inserting in lieu thereof, "elective franchise," to have been negatived. The Clerk read that it was adopted by the Convention. I only call attention to that fact. It is not according to my understanding. I may be mistaken.

The PRESIDENT *pro tem.*—The recollection of the Chair, sitting in another place, is that it was negatived.

There being no objection the Journal was corrected in that respect.

There being no further objections thereto the Journal as corrected was declared approved.

Mr. GREELEY—I move that the roll of the Convention be now called.

Mr. ARCHER—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Archer, and it was declared lost.

Mr. GREELEY—I now move that the roll of the Convention be called.

The SECRETARY proceeded with the call of the roll, and the following members were found to be present:

Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Axtell, Baker, Barker, Barto, Beadle, Beals, Beckwith, Bickford, Carpenter, Cassidy, Champlain, Chesebro, Church, Clark, Clinton, Cochran, Conger, Cooke, Corning, Daly, Develin, Eddy, Endress, Ferry, Flagler, Folger, Fowler, Fuller, Goodrich, Gould, Grant, Graves, Greeley, Hammond, Harris, Houston, Kinney, Krum, Landon, A. Lawrence, M. H. Lawrence, Lee, Ludington, Mattice, Merritt, Miller, More, Morris, A. J. Parker, C. E. Parker, Prindle, Prosser, Reynolds, Root, Rumsey, Schoonmaker, Smith, Spencer, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—67.

On motion of Mr. MORRIS the Convention adjourned.

TUESDAY, July 30, 1867.

The Convention met at 11 o'clock A. M., Mr. FOLGER, President *pro tem.* in the chair.

Prayer was offered by Rev. AMBROSE O'NEIL.

The Journal of yesterday was read by the SECRETARY, and was approved.

Mr. BURRILL—I rise to a question of privilege. On Thursday last, in the afternoon, an amendment was offered by Mr. Gross of New York, giving the right to vote to persons who should have declared their intention to become citizens prior to the adoption of the proposed Constitution. I had received a telegram calling me to the city, and was not in my seat at the moment the amendment was offered; on my return to the chamber, for the purpose of making some further preparations for my departure, the roll was being called, and shortly after I entered, my name was called as among the absentees, and I inquired of a gentleman near me as to the effect of the amendment, and I voted according to the construction which I received from him. Subsequently, on reading the amendment, I found that I had misapprehended its meaning. The amendment was lost, and my vote stands recorded in the negative and among the majority. Had I properly comprehended the amendment I should have voted in favor of it, and should have been recorded among the minority, and I now desire to be so recorded. I wish to make this explanation in order that my views on this question may be rightly understood, and that I may stand correct upon the record.

No objection being made, the Journal was ordered to be corrected in that respect.

Mr. MERRILL—If in order, I wish to ask for leave of absence for three days for Mr. Field, of Orleans.

No objection being made, leave was granted.

The PRESIDENT *pro tem.* announced the special order to be the report of the Committee on the Right of Suffrage as amended, and the pending question, the motion of Mr. Champlain to strike out section four.

Mr. KINNEY—I offer the following amendment to the section by striking out, after the word "law" in the seventh line of said section, the words "but such laws shall be uniform in their requirements throughout the State."

Mr. VEEDER—I rise, sir, for the purpose of inquiring whether the amendment of the gentleman from Allegany [Mr. Champlain] will strike out this section and substitute another provision. I understand the amendment of the gentleman from Tioga [Mr. Kinney] to be to the section as it stands printed, and I desire to inquire whether an amendment of that kind is in order, and whether the amendment should not properly be to the substitute as offered by the gentleman from Allegany [Mr. Champlain].

The PRESIDENT *pro tem.*—The Chair understands that the amendment of the gentleman from Tioga [Mr. Kinney] if adopted would take the place of the amendment of the gentleman from Allegany.

Mr. KINNEY—At our session on Friday, it was then decided, where a proposition was offered to strike out the entire section and to substitute another in its place, it was in order to perfect the original proposition before the question of striking out and inserting could be taken, and under that ruling I offer this proposition, which is to perfect the original section as printed.

Mr. LIVINGSTON—Mr. Chairman, I trust, sir, that this Convention will refuse to strike out that part of the section now under consideration,

roll, Merritt, Miller, Opdyke, C. E. Parker, Pond, Prindle, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Sherman, Smith, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams—71.

**Noes**—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Clinton, Cochran, Conger, Corning, Daly, Develin, Greeley, Gross, Hatch, Hitchman, Kernan, Law, Livingston, Loew, Lowrey, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Potter, Robertson, Schell, Schoonmaker, Schumaker, Seymour, Tappan, M. I. Townsend, S. Townsend, Tucker, Veeder, Weed, Wickham—43.

**Mr. BARKER**—I move to amend the section by striking out the word "any" at the end of line five, and inserting in lieu thereof the words "every general." The object of introducing this amendment and changing the language is to have the registry law apply to general elections and not have it applicable to towns and municipal elections. I suppose that the design of the committee is to have it apply to general elections and not to mere local elections.

The question was then put on the amendment of Mr. Barker, and it was declared carried.

**Mr. VEEDER**—I move to amend the section by striking out all after the word "established" in line three. It seems to be the sense of the Convention that no uniform laws shall be established, which I regret very much. I submit that it is entirely unnecessary that a provision of this kind should be incorporated in the fundamental law of the State. Every gentleman who is at all familiar with the registry law as it now exists is quite well aware of the fact that that registry law establishes, as one of its provisions and requirements, that electors shall be upon the register at least the Friday preceding the Tuesday of election, which fixes the day, and if the Legislature, under the old provision of the Constitution, had the right and possessed the power to fix a day when the registry shall close, which they do and which has never been questioned, I submit that it is entirely unnecessary to insert a proposition of this kind in the Constitution. Again, sir, it provides that unless a party is duly registered, and his name placed upon the register, he shall not vote. That is the law of to-day, as it applies to the cities of New York and Brooklyn. A provision of that kind cannot be incorporated in the law and in the Constitution as it now stands, and I submit it is entirely unnecessary. In reply to some remarks that have been made in regard to a desire not to have uniform laws, I wish simply to state that, in my judgement, a greater hardship prevails in the cities of New York and Brooklyn for an elector than anywhere else in the State. To enable him to cast his vote, he is obliged under the present law to lose three days before he can accomplish that purpose; one day to attend personally at the registry and see that his name is upon the roll; so that although any of us may have voted last fall in the cities of New York and Brooklyn, before we can vote at the next election we must again attend personally and place our names upon the register. That is one day; then the law empowers the registrar to examine the roll, and in the absence of the elector to strike

his name from the roll, if he sees fit; that requires a second attendance, and a third attendance on the day of election, if gentlemen do not choose to enact a provision here that the law shall be uniform. I submit it is a hardship as the present law exists in the cities of New York and Brooklyn.

**Mr. POND**—I am opposed to this proposed amendment to this section. The result will be, sir, if it is adopted, to place it in the power of the majority of the Legislature to sweep it out of existence as any gentleman may know from the interest exhibited here on this question. How long in case the political majority in the Legislature is changed would this wise and salutary provision be found upon our statute books? It would be swept away in the twinkling of an eye, and when swept away, I do not know when the political majority at present in the ascendancy would ever get possession again. The provision requiring a registry is a salutary and necessary law—and in regard to the remarks that have been made in reference to having it uniform throughout the State, that it is a very specious claim, and one of the gentlemen who have made remarks on this subject puts it in this light, that it makes a distinction between white voters, to wit, those who reside in cities and villages, and those who reside in other parts of the State. I would like to inquire of that gentleman if those citizens who reside in cities do not have different laws, resulting from the very organization and municipal incorporations of cities, from those citizens who reside and live in the country? Why, sir, the very constitution of a municipal government makes a different law and a different form of government from that which citizens of the country live under, and is it to be said that all laws are to be made uniform throughout the State? If so let us abolish the city of New York, and take it under the fostering care of the rural districts; that will make it a little better, I apprehend, than what it now is. The very fact of their being a municipal government, the very fact that a city is very different from the country, the very fact that man made the city and God made the country, makes it necessary for a different law in reference to elections and many other things. You might as well say that there must be a police department in every town in the country in order to make it equal and uniform throughout the State. I deny the whole thing. The fact that in the city of New York and other cities large numbers of people have congregated, makes it necessary that there should be different laws. In order to make it uniform, the law ought to go further and provide that there should not be more voters living in a certain given space in the city of New York than there are in any remote town in the country. When that is done, and the inhabitants are as sparsely located in the cities as in the country, then it will be time, and time enough, to make laws applicable to elections alike in the cities and in the country. Mr. President, the effect of requiring citizens in the country to be registered, six days for instance before election, will, in its operation, disfranchise a large number who would have, in order to be registered, to take a whole day. Now, in a

great many instances they will not do it, and the evil to be guarded against does not exist in that case. They are all known on election day; every inhabitant and citizen in the town are known in the rural district; they are not known in the city, and this difference in the law is created by that very fact. I am opposed, therefore, to striking it out, and I shall be in favor of another amendment to this section as it now stands in order to carry out the view, as I understand it, of the Convention, as they have indicated their views by striking out the last clause.

Mr. A. J. PARKER—I would have been quite willing that this clause moved to be stricken out should have remained in if this Convention had not just now stricken out the following clause, which requires that the registry law should be uniform throughout the State. I regret exceedingly that the Convention has come to the conclusion to strike out that last clause which the Committee had reported. The gentleman from Onondaga [Mr. Alvord], in the remarks he made upon that subject, said that it appeared that the minority of this Convention were determined to get in every possible partisan advantage, and he thought it high time that the majority should mark out their own course, regardless of the minority. This I understand to be the substance of his remarks. I regret exceedingly that this declaration of war should be thus made by the distinguished gentleman from Onondaga [Mr. Alvord]. There is not the slightest foundation for the idea such as he has advanced upon that subject. Pray, what have the minority done that indicates a desire to gain any possible partisan advantage? We have sustained a clause reported by the Committee on the Right of Suffrage, a large majority of which (five to two, I am told), represent the political majority of the Convention, and because we do so we are denounced as attempting to gain a partisan advantage.

Mr. SCHUMAKER — The committee were unanimous on that point.

Mr. A. J. PARKER—I insist, therefore, that this attack is causeless, unfounded and does not belong to the distinguished position that that gentleman has occupied before the public and in this body. Mr. President, what could we in the minority gain by any attempt to secure a partisan advantage? We are utterly helpless, and the moment the tocsin is sounded we are voted down. We can do nothing, and the gentleman knows it perfectly well. We can gain no partisan advantage. We can seek to make no Constitution, or to place any clause in the Constitution which can give us a partisan advantage hereafter. A minority can never do it. But it is not so with the majority. They have the power, and he says they will exercise it. They can make a Constitution which they think will give them a partisan advantage, and he says they shall do so. Well, sir, we can resist, and that is all. We cannot resist successfully. We shall be overborne if this doctrine be carried out to the extent avowed here. Let it come, sir. We will do our duty, struggling not to make a partisan Constitution, but honestly, fairly and candidly, seek to make one that shall improve the fundamental law of the

State. And if we are overborne, thank God there is a higher tribunal to which we can appeal for redress.

Mr. RATHBUN—I hope that the members of the Convention will not take fire at what was said by my friend from Onondaga [Mr. Alvord]; no harm will come from it, I hope. I think there is no reason that any should. He was very earnest, and perhaps went a little further than would be wholly justifiable. My idea about it is, and I presume the gentleman from Albany [Mr. A. J. Parker], will agree with me, that it is the duty of all of us, no matter about party, to endeavor to make a Constitution that will be for the benefit of all, and equal for all. Now, this question presents itself, which has been discussed in regard to uniformity. Now, sir, so far as uniformity is concerned, I agree with the gentleman that all of the people of the State of New York entitled to vote shall be registered—that is uniform—they shall be registered everywhere, in the country and in the city. But, sir, it would be perfect idleness and gross injustice to provide by law for the same means and the same caution and the same care of registering in the country as in cities. The statement of the fact is enough to convince every man that knows the difference between city and country, that I am right when I say that it would be really unjust to require in the country, where people are permanently located, and where there are no comers and goers, where the father is succeeded by his son, and no strangers come there except the hired men, to ask of them to be guided by the same precautions and restrictions as in the cities, where the whole world is afloat, and where thousands upon thousands are transient, that might vote but for the registry law. Now, sir, I submit that there must be a distinction in the legislation on this subject between the cities and the country. You take a city, an election district is composed of a very small territory; every man can go out in the evening after the day's work has been done, and especially with the short hours which are in vogue now, and have plenty of time to stop and register—he goes a quarter of a mile if you please, and thus every man can be registered, he being personally present to direct it. But how is it in the country? A town in the country is sometimes ten miles long, and the farmer—and they are all farmers pretty much, except the blacksmith, the merchant and tavern keeper—they must all go on their horses or on foot, five or six miles to the registry. There is a vast difference between demanding the personal presence of a man in the country, and the traveling five or ten miles to do an act which is wholly unnecessary by a man known to everybody on both sides, a man whose name stands there as his title deed stands in the record of the county, perfectly understood and perfectly known—that he shall run ten miles to be recorded every annual election when the inspectors on both sides, and the registrars on both sides, know every one of these men. But you go to the city, and a man does not know his next door neighbor; he may live there a year, and he does not know who he is or where he is from, or how long he has been there, nor whether he is entitled to vote or not.



The precautions are necessary there, sir, because there is a dense population, and there is a concentration of elements which require the administration of law in a different manner—with a degree of watchfulness, a degree of care, and a degree of skill in the prevention of fraud, which is wholly unknown in the country, and wholly unnecessary, too; and, therefore, I say, although I desire that registration should be uniform yet, I desire that the Legislature should be at liberty to make it applicable to the country and city according to the wants and necessities for the purity to the ballot-box.

Mr. BICKFORD — I would inquire whether an amendment is now in order to that portion of the section, which the gentleman from Kings [Mr. Veeder] has moved to strike out?

The PRESIDENT *pro tem.* — The Chair understands two amendments are already pending so that no further amendment at present, is in order.

Mr. VEEDER called for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Veeder, and on Mr. Duganne's name being called—

Mr. DUGANNE — I have paired off with Mr. Larremore.

There being no objection, Mr. Duganne was excused from voting.

Mr. HATCH — I desire to say that I have paired off with Mr. E. P. Brooks, of Tioga.

There being no objection Mr. Hatch was excused from voting.

Mr. AXTELL — I desire to change my vote. I voted under the apprehension that no registry would be necessary, inasmuch as rebels, deserters and those who ran away to avoid conscription, shall be allowed to vote. I desire to change my vote to the negative.

The question was put on the amendment of Mr. Veeder, and it was declared lost by the following vote:

*Ayes*—Messrs. Barnard, Barto, Bergen, Burrill, Cassidy, Champlain, Chesebro, Cochran, Conger, Corning, Daly, Develin, Gross, Hitchman, Kernan, Law, Livingston, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Nelson, Paige, A. J. Parker, Robertson, Rogers, Schell, Schoonmaker, Schumaker, Seymour, Tappen, Tucker, Veeder, Wickham—37.

*Noes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, E. Brooks, W. C. Brown, Carpenter, Case, Cheritree, Clinton, Corbett, T. W. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Greeley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Miller, Opdyke, C. E. Parker, Pond, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—79.

Mr. M. I. TOWNSEND — I wish to move to

reconsider the vote adopting the proposition of the gentleman from Tioga [Mr. Kinney].

The motion was laid on the table.

Mr. LOEW — I move to amend the section as follows:

After the word "citizens," on the fourth line, insert the words, "who shall be," and after the word "districts," on the fifth line, the words, "on the ensuing day of election."

The object of this is to provide that voters may have their names inserted on the register who may become voters between the day of registration and the day of election. The present registry law provides that, but it is not provided for in the section now before us.

Mr. GREELEY — I trust that amendment will be adopted. I do not think it is necessary, but at the same time if it satisfies any one, I hope it will be adopted.

Mr. ENDRESS — It is provided for in the section which reads thus: "who shall be entitled to the right of suffrage hereby established."

Mr. LOEW — It does not say whether it is on the day of election or at the time the registry is made.

The question was then put on the amendment of Mr. Loew.

Mr. WEED called for the ayes and noes.

Mr. VAN CAMPEN — I call for a division of the question.

The PRESIDENT *pro tem.* — The question will first be taken on the insertion in line four.

Mr. ALVORD — I hope the gentleman who called for the ayes and noes on this amendment will withdraw it. It seems to me there can be no objection to this amendment.

Mr. WEED — Mr. President —

The PRESIDENT *pro tem.* — Discussion is not now in order.

Mr. WEED — I do not wish to withdraw my call for the ayes and noes and have it beaten.

The Clerk proceeded to call the roll and the amendment of Mr. Loew, was declared adopted by the following vote:

*Ayes*—Messrs. Alvord, Andrews, Barker, Barnard, Beckwith, Bergen, Bickford, Bowen, E. Brooks, W. C. Brown, Burrill, Carpenter, Cassidy, Champlain, Chesebro, Clinton, Cochran, Conger, Corbett, Corning, Daly, Develin, T. W. Dwight, Eddy, Ely, Ferry, Flagler, Folger, Fuller, Fullerton, Goodrich, Grant, Greeley, Gross, Hale, Hitchcock, Hitchman, Kernan, Ketcham, Kinney, Krum, Landon, Lapham, Law, A. Lawrence, Lee, Livingston, Loew, Lowrey, Ludington, Magee, Mattice, McDonald, Merritt, Miller, Monell, More, Morris, Nelson, Opdyke, Paige, A. J. Parker, C. E. Parker, Potter, Prindle, Reynolds, Rogers, Schell, Schoonmaker, Schumaker, Seymour, Sheldon, Stratton, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Cott, Veeder, Wakeman, Weed, Wickham—81.

*Noes*—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Baker, Beadle, Bell, Case, Cheritree, Endress, Farnum, Fowler, Graves, Hammond, Harris, M. H. Lawrence, Merrill, Prosser, Rathbun, L. W. Russell, Sherman, Smith, Spencer, Wales, Williams—26.

Mr. WEED — If the first vote is indicative of the sense of the Convention, in order to save time



great many instances they will not do it, and the evil to be guarded against does not exist in that case. They are all known on election day; every inhabitant and citizen in the town are known in the rural district; they are not known in the city, and this difference in the law is created by that very fact. I am opposed, therefore, to striking it out, and I shall be in favor of another amendment to this section as it now stands in order to carry out the view, as I understand it, of the Convention, as they have indicated their views by striking out the last clause.

Mr. A. J. PARKER—I would have been quite willing that this clause moved to be stricken out should have remained in if this Convention had not just now stricken out the following clause, which requires that the registry law should be uniform throughout the State. I regret exceedingly that the Convention has come to the conclusion to strike out that last clause which the Committee had reported. The gentleman from Onondaga [Mr. Alvord], in the remarks he made upon that subject, said that it appeared that the minority of this Convention were determined to get in every possible partisan advantage, and he thought it high time that the majority should mark out their own course, regardless of the minority. This I understand to be the substance of his remarks. I regret exceedingly that this declaration of war should be thus made by the distinguished gentleman from Onondaga [Mr. Alvord]. There is not the slightest foundation for the idea such as he has advanced upon that subject. Pray, what have the minority done that indicates a desire to gain any possible partisan advantage? We have sustained a clause reported by the Committee on the Right of Suffrage, a large majority of which (five to two, I am told), represent the political majority of the Convention, and because we do so we are denounced as attempting to gain a partisan advantage.

Mr. SCHUMAKER — The committee were unanimous on that point.

Mr. A. J. PARKER—I insist, therefore, that this attack is causeless, unfounded and does not belong to the distinguished position that that gentleman has occupied before the public and in this body. Mr. President, what could we in the minority gain by any attempt to secure a partisan advantage? We are utterly helpless, and the moment the tocsin is sounded we are voted down. We can do nothing, and the gentleman knows it perfectly well. We can gain no partisan advantage. We can seek to make no Constitution, or to place any clause in the Constitution which can give us a partisan advantage hereafter. A minority can never do it. But it is not so with the majority. They have the power, and he says they will exercise it. They can make a Constitution which they think will give them a partisan advantage, and he says they shall do so. Well, sir, we can resist, and that is all. We cannot resist successfully. We shall be overborne if this doctrine be carried out to the extent avowed here. Let it come, sir. We will do our duty, struggling not to make a partisan Constitution, but honestly, fairly and candidly, seek to make *one that shall improve the fundamental law of the*

State. And if we are overborne, thank God there is a higher tribunal to which we can appeal for redress.

Mr. RATHBUN—I hope that the members of the Convention will not take fire at what was said by my friend from Onondaga [Mr. Alvord]; no harm will come from it, I hope. I think there is no reason that any should. He was very earnest, and perhaps went a little further than would be wholly justifiable. My idea about it is, and I presume the gentleman from Albany [Mr. A. J. Parker], will agree with me, that it is the duty of all of us, no matter about party, to endeavor to make a Constitution that will be for the benefit of all, and equal for all. Now, this question presents itself, which has been discussed in regard to uniformity. Now, sir, so far as uniformity is concerned, I agree with the gentleman that all of the people of the State of New York entitled to vote shall be registered—that is uniform—they shall be registered everywhere, in the country and in the city. But, sir, it would be perfect idleness and gross injustice to provide by law for the same means and the same caution and the same care of registering in the country as in cities. The statement of the fact is enough to convince every man that knows the difference between city and country, that I am right when I say that it would be really unjust to require in the country, where people are permanently located, and where there are no comers and goers, where the father is succeeded by his son, and no strangers come there except the hired men, to ask of them to be guided by the same precautions and restrictions as in the cities, where the whole world is afloat, and where thousands upon thousands are transient, that might vote but for the registry law. Now, sir, I submit that there must be a distinction in the legislation on this subject between the cities and the country. You take a city, an election district is composed of a very small territory; every man can go out in the evening after the day's work has been done, and especially with the short hours which are in vogue now, and have plenty of time to stop and register—he goes a quarter of a mile if you please, and thus every man can be registered, he being personally present to direct it. But how is it in the country? A town in the country is sometimes ten miles long, and the farmer—and they are all farmers pretty much, except the blacksmith, the merchant and tavern keeper—they must all go on their horses or on foot, five or six miles to the registry. There is a vast difference between demanding the personal presence of a man in the country, and the traveling five or ten miles to do an act which is wholly unnecessary by a man known to everybody on both sides, a man whose name stands there as his title deed stands in the record of the county, perfectly understood and perfectly known—that he shall run ten miles to be recorded every annual election when the inspectors on both sides, and the registrars on both sides, know every one of these men. But you go to the city, and a man does not know his next door neighbor; he may live there a year, and he does not know who he is or where he is from, or how long he has been there, nor whether he is entitled to vote or not.

never been detained five minutes; it is not a five minutes' walk in any election district in the city of New York from the place of residence of the voter to the place of registration. The place is kept open until nine o'clock in the evening; it is open several days, and no man is shut out; no man is compelled to wait unless he chooses. It is necessary for the purity of elections in the cities of New York and Brooklyn, and in the other large cities of this State, that we should have a registry law. Why, sir, last fall some sixteen thousand more were registered in the city of New York than cast their vote, and why did they not vote?

Mr. DEVELIN — Because they did not have time.

Mr. HUTCHINS — They did not vote, or many of them did not because they were found on investigation to have been illegally registered. It was known they were illegal voters, and they did not dare to present themselves for that reason. Why, sir, the names of children two years old were registered. In some districts, not finding names enough, they even registered under the name of goats and I don't know but pigs also, and would have undoubtedly voted upon them had not the fraud been discovered. The gentleman knows as well as I do that whole households were registered from the father down to the youngest son not two years old. Now, will you say it is not necessary that we should have a registry law in the city of New York? Why, you repeal that law and throw the gates open and give time enough to vote, and we can give you half a million of votes in New York city. There is no trouble about it. All we ask in the city of New York is, that we should have a good, fair operative registry law; we have it now, and I believe it will be continued in the future. It is for this reason that I object to putting any other restriction in the Constitution than is absolutely necessary, giving the Legislature discretion to do what in their judgment they may think wise and proper.

Mr. DEVELIN — I ask permission of the Convention to make an explanation.

The PRESIDENT *pro tem.* — It is not now in order.

Mr. BARTO called for the ayes and noes on his amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Barto, and it was declared lost by the following vote:

**Ayes**—Messrs. Barnard, Barto, Bergen, Burrill, Cassidy, Champlain, Chesebro, Clifton, Cochran, Conger, Daly, Develin, Greeley, Gross, Hardenburgh, Hitchman, Kernan, Law, Livingston, Loew, Lowrey, Mattice, Monell, More, Morris, Nelson, Paige, Potter, Robertson, Schell, Schoonmaker, Seymour, Tappen, S. Townsend, Tucker, Veeder, Weed, Wickham—38.

**Noes**—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, W. C. Brown, Carpenter, Case, Cheritree, Cooke, Corbett, T. W. Dwight, Eddy, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton,

Goodrich, Gould, Grant, Graves, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapnam, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Opdyke, C. E. Parker, Pond, Prindle, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—75.

Mr. DEVELIN — I offer the following amendment to the section:

Add at the end thereof the words: "But no distinction shall be made in any such laws between a native born and naturalized citizen, as to the evidence to entitle such citizen to be registered."

Mr. DEVELIN — The remarks which I had the honor of submitting a moment ago are applicable to this amendment. I propose, however, to reply to the gentleman from New York [Mr. Hutchins], who said there had been sixteen thousand voters registered before the last election more than had voted. He also remarked that even the pigs and the goats and children of two years of age had been registered. What the surnames of the pigs and cows were I cannot tell; but I know very well this fact, that the reason why many of the sixteen thousand did not vote arose from the fact that there was not time for the voters to deposit their votes in the ballot-box. Some of the election districts in the city of New York are so large that commencing at sunrise and ending at sunset, the voters could not vote amounting, in some places, to ten or fifteen per cent of the registered voters, and the papers of the city of New York, both democratic and republican, after the election was over and this fact had been ascertained, abused the common council for not having increased the number of election districts in the city. I know of no such fact as the gentlemen charged me with the knowledge of, that persons had been illegally registered. I know of no such fact whatever.

Mr. ALVORD — Will the gentleman permit me to ask him a question? How many voters were there in each election district?

Mr. DEVELIN — I do not now remember, but I recollect the fact that persons who desired to vote and who had been registered, had not an opportunity, for the time was too brief, or the election district too large. The election district cannot be altered between the first of August and the first of January by the common council. That is the principal reason why these sixteen thousand did not vote. It will readily occur to the gentlemen of this Convention that a great many voters may have gone out of the city, or have been sick, or were occupied so as to prevent them from going to the polls. Thus it always happens that a great many registered voters have not an opportunity of voting on the day of election. This is the explanation I wish to give of the remarks of the gentleman from New York [Mr. Hutchins]. The remarks which I had the honor of submitting to the Convention a few moments ago were not intended in opposition to the registry law. I agree with my friend from Oneida [Mr. Kernan]; I am not opposed to a proper uniform registry

I will withdraw my call for the ayes and noes on the second part of the amendment.

The question was put on the second part of the amendment of Mr. Loew, and it was declared adopted.

Mr. BICKFORD—I move to amend the section by adding at the end of section 4 the words "For the purpose of town meetings and the election of town officers, the several towns shall be considered as election districts within the meaning of this Constitution; but no registration of votes shall be required for town meetings, unless the Legislature in their discretion shall so provide."

Mr. WEED—Am I right in understanding that the word general election was inserted?

The PRESIDENT *pro tem.*—The Chair so understands.

Mr. WEED—If so, there is no need to insert this.

Mr. BICKFORD—Section 1 provides that an elector may vote in the district where he resides, not elsewhere. Now he cannot vote at town meetings within the strict construction of section 1, unless he votes at the district in which he resides. Therefore it is necessary to provide that the town shall be considered an election district within the meaning of the Constitution.

Mr. ALVORD—I wish the gentlemen to explain to me whether a town is not an election district for the purpose of electing town officers. It strikes me so.

Mr. BICKFORD—I propose to provide that it shall be considered for that purpose—an election district—that is all.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. BARTO—I move to amend the section by inserting, after the word "law" in line seven, the words "and the oath of the applicant for registration as to his citizenship shall be deemed sufficient."

Mr. KERNAN—I call for the ayes and noes. The object of this amendment, I suppose, is to prevent a difficulty which was found to be very onerous on inspectors; requiring, under the registry law, a man who had been naturalized to produce the best legal evidence of the fact, to wit, the naturalization papers issued to him or a copy of the record. The practice is found to be very onerous. I suppose that the oath would be sufficient, the party to be subject to the pains and penalties of perjury if he swears falsely.

Mr. RATHBUN—It seems to me it would not be very onerous for a man to carry his naturalization papers with him, or when he went to be registered. I do not exactly see how that can be. It seems to me to be very easy to carry his papers with him at the time.

Mr. DEVELIN—I would suggest to the gentleman from Cayuga [Mr. Rathbun] that in many cases it has come within my knowledge in the city of New York that persons who had been naturalized have lost their naturalization papers, or that they had been destroyed by fires at the residence in which persons resided. The distinction made by the law of 1865, in favor of any native-born citizen, authorizing him by his oath or the oath of his friends to prove his nativity and thus to have his name put upon

the register is very unjust. The same law requires the naturalized citizen to produce his naturalization papers, and enacts that no other evidence than the production of his naturalization papers should entitle him to have his name put upon the register unless he can prove to the satisfaction of the registrars that he has lost his papers, or in some other way that he has become a citizen of the United States; now this satisfaction of the registrars is a matter left to their own judgment. There is no appeal from their decision. There are no means by which a person who has voted for twenty years or more, being a naturalized citizen, can appeal. There is no court for him to appeal to from an unjust decision of these registrars—their judgment is final. We invite by every means in our power, emigration; we ask people from abroad to come here and help our citizens to develop the resources of our country; we bring them into our families, to assist our wives in the management of the household; we invite them to assist us in building our railroads and our canals and other works for the improvement of the country; and yet in the highest and most vital point—that of voting—we require from them a process which we do not require from the native-born citizens. I think the naturalized citizen should be allowed to prove his right to be registered, and to vote in the same manner as any native-born person. If a person claiming to be a native-born citizen be challenged as to his birthplace, he can produce his friend or his parents to prove the place of his nativity; but if a foreign-born person should be challenged he cannot produce those who may have been present when he was naturalized, but he must produce his papers, and no evidence except those papers is by law absolutely sufficient and conclusive. Now, this is an injustice, which the people of the State of New York will not, in my judgment, sustain.

Mr. DALY—I would add another reason—

The PRESIDENT *pro tem.*—The Chair will inform the gentleman, that two gentlemen have already spoken in favor of the amendment.

Mr. HUTCHINS—I am opposed to this amendment for the reason that it is unnecessary. It savors too much of legislation, as do many other amendments which have been proposed. If the Legislature, in their wisdom, see fit to change the law that exists to-day, they can do it, but I see no reason why we should determine the matter, by a constitutional provision, of the character now proposed. For that reason I am opposed to it. I would leave this matter in the hands of the Legislature, untrammelled, believing that they will do justice to both city and country as the wants and necessities of the city and the country may hereafter be developed in this respect and the purity of elections may require. I believe that the Legislature will do justice to all parties concerned. So far, the registry law has worked well, and all these assertions in relation to its hardship in the city of New York are the merest nonsense and moonshine in the world. Talk about three days' time being required to get registered in the city of New York! Why, Mr. President, I have been registered at each election since the law was passed, and I have



said "it is in your power to make election districts enough, and if you have not now, see that you have a sufficient number the next time," and they went to work last year and divided the city up, making an additional number of election districts, so many that I defy the gentlemen here to state any one district (and he can take his time) in New York where, when the polls were closed, a person was deprived of his right of voting for the reason that there was not time to get his vote in. I think it is exceedingly improbable, if we are to believe the statements that gentlemen make in regard to the stringency with which the excise law is carried into execution on Sunday (that day being in immediate proximity to Tuesday, the day of election), that many of that class of voters could have been sick and prevented from coming to the polls for that reason. Some of them may have been otherwise occupied or employed, which prevented their appearing at the polls on the day of election. I should not be surprised if that was the case. But the fact exists that there were some sixteen thousand persons registered who did not vote, and the further fact exists that upon an examination some twelve thousand of those names were found to have been fraudulently enrolled, that fact being proclaimed through the press, and these men, undoubtedly feeling guilty, did not present themselves to vote. I do not know what ticket they would have voted; I do not charge it upon any party; we are not here legislating, in making a Constitution for a party; it may be that they would have voted for the party to which I belong, and may be not, but at any rate they did not present themselves, and the examination of the registry list shows that some twelve thousand of that sixteen thousand, as I believe, were most clearly fraudulently enrolled.

The question was then put on the amendment of Mr. Develin.

The ayes and noes were called for.

A sufficient number seconding the call, the ayes and noes were ordered, when the amendment was declared lost by the following vote:

**Ayes**—Messrs. Barnard, Carto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Clinton, Cochran, Conger, Corning, Daly, Develin, Greeley, Gross, Hardenburgh, Hitchman, Kernan, Law, Livingston, Loew, Lowrey, Magee, Mattice, Monell, Morris, Nelson, Paige, A. J. Parker, Potter, Robertson, Schell, Schumaker, Seymour, Tappen, S. Townsend, Tucker, Veeder, Weed, Wickham, Young—42.

**Noes**—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Attall, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, W. C. Brown, Carpenter, Case, Cheritree, Cooke, Corbett, T. W. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Goodrich, Gould, Grant, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Opdyke, C. E. Parker, Pond, Prindle, Prosser, Rathbun, Reynolds, Root, L. W. Russell, Sheldon, Sherman, Smith, Spencer,

Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—75.

Mr. HARRIS—I offer the following amendment: "Strike out all after the word 'made,' in line five, so as to strike out 'it shall be made six days before the election.'" I am in favor of providing in the Constitution for a registry law, and providing that no person shall be allowed to vote who has not been registered according to law; but all beyond that is a proper subject for legislative debate, and I hope, therefore, that this provision in relation to the registration of voters six days before election will be left to the Legislature; it is a proper subject for legislative consideration.

Mr. GREELEY—The object of the committee who framed this article, I submit (whether wise or unwise I leave to the Convention to say), was to leave as little as possible to the discretion of the Legislature. It is not at all a question of the wisdom or the virtue of the Legislature; but with reference to this important fact, I pray the Convention not to disregard that what you put in the Constitution of the State you may fairly presume the people of the State to know; whereas what is scattered throughout fifty or one hundred volumes of statutes you know and I know that very many of our people do not, and will not know. This distinction is exceedingly important. The people of the State are fairly presumed and bound to read and understand the Constitution of their State, and they are obliged to conform to its requirements; but they cannot know everything that is contained in all the volumes of the revised and unrevised statutes. Now, if you let these words stand right here, every man will have notice, he will have sufficient notice—"Sir, get your name on the register, or see that it is there, at least six days before election, otherwise you cannot vote." Whereas, if you strike that out, a man may come up to the polls to vote, and he will be told, "You have no right to vote; you ought to be registered. The Legislature changed the law last year, and required the registration to be made so many days before election." How plainly this proposition sets everything afloat, how it makes matters uncertain. I have voted all along against the majority of this Convention on several questions, on the faith of of this, and I am perfectly willing to trust the oath of the elector without requiring him personally to put his name on the registry every year, if you will give me six days to scrutinize and see whether he is entitled to vote or not; but if you will allow him to register the night before, or the day of election, how can you know what names are justly there? This is a reasonable and proper notice given to the voter, to be registered, and to see that he is properly and not illegally registered. I pray the Convention not to strike out this clause.

Mr. M. I. TOWNSEND—I have tried to govern my action in this case without any reference to there being two parties in this State, although I have never forgotten it. I voted against most of those who agree with me generally in politics this morning, and tried to act consistently with my views and with the best interests of the State. But I would like to have all parties remember that there is a great



law for the purpose of securing purity of elections, but I think the argument used by the gentleman on the other side in regard to sixteen thousand non-voting registered voters, had no application whatever to a registry law, or the amendment which has been offered.

Mr. ALVORD—I asked the gentleman from New York [Mr. Develin] a question which he did not deem fit to answer, probably because he had not the data before him. I understand the fact to be that in the city of New York election districts are very small, and the number of voters in the district is very much less than they are in the country. At the last election we had probably as much excitement in my city as in New York, and in a single election district we were enabled to take the votes of eleven or twelve hundred without any difficulty through the day. If I understand it right, the election districts in the city of New York do not exceed the average of six hundred for the entire city; so there is no difficulty in that regard of getting out all the voters and giving them a full and fair opportunity to vote. I do not know how it operates in the city of New York, but the result of this necessity of the production of the naturalization papers, or a certified copy of them from the clerk's office in my city, had this ending at the last election, that over one dozen men in that city, who had voted continuously for years and years, and some of them twenty years, as naturalized voters, when they came to the polls they could not produce any naturalization papers, for they never had any. That is the reason. They never had them. Yet they had been voting, and voting persistently, year after year, on the ground that they were naturalized citizens of the State of New York and of the United States of America. But when you came to put the test oath, where were their naturalization papers? They had to confess and acknowledge that they had to begin again and be re-naturalized, for they had lost even the recollection of the fact that they had ever been naturalized.

Mr. DALY—I agree with my colleague from New York [Mr. Hutchins] that there is little difficulty in being registered in that city, probably less than in the country, but that is not a reason why there should not be a uniform rule of registration throughout the State. The object of requiring the presence of the elector to be registered is to prevent frauds on the part of the inspectors in putting names upon the registry lists. It is to prevent this that the elector is required to come and present himself that he may be identified and known before being registered. In my opinion this is quite as essential in the country. The gentleman from Saratoga [Mr. Pond], quoting the well known line of Cowper, that "God made the country, man the town," supposes there is a difference in this respect, between the persons who dwell in cities and those who dwell in the country. God made the men who live in the country as well as the men who live in the city. He distributed human character according to the organization of the individuals he created, and it is quite as possible for frauds of the character suggested to be perpetrated in the country, where there is a motive for them, as it is in the city. Perhaps they can be done more extensively

in the city than in the country, but that is no reason why they should not be also prevented in the country. I agree that it is proper that we should have a registry law. I am in favor of such a law; but I wish that if we have one it shall be uniform in its operation. With reference to the feature to which the gentleman from Onondaga [Mr. Alvord] objected it is, as I have said, of as much importance in the country, as far as I have any knowledge, as it would be in the city. I beg leave also to say, in reply to him, that the law recently enacted by the Legislature has operated very harshly in respect to the proof of the right of a naturalized citizen to vote. Under the law of 1802 minors, whose parents are naturalized, are naturalized by the naturalization of the parent, and I will mention one instance to show how severely the rule operates which requires a citizen thus naturalized to produce the naturalization papers of his parents. One of the oldest, one of the wealthiest, and one of the most respectable citizens of the city of New York who came to this country an infant; could not, under this law, produce his father's papers; though he had understood from his infancy that his father had been naturalized, and he had himself voted for fifty years. He came into my court to be naturalized in the usual mode, but, upon an inquiry, directed by myself, it was found that his father had been naturalized in my court in 1798, so that this gentleman's naturalization became unnecessary. A great number of persons come from other States, who, as well as persons long resident in this State, do not know when or where, or in what court their parent was naturalized, and they vote generally upon the statement of their father that he had been naturalized, or upon having seen his papers at some remote period, and it is utterly out of their power to procure the proof of the fact of their father's naturalization. As the time is short, I will add nothing further except to say, Mr. President, that these difficulties are so considerable, that in my judgment it would be desirable, although it may be liable to the objection that it is more appropriately a matter of legislative detail than as a part of the fundamental law, that the oath of the applicant, subjects to the responsibilities which attaches to it, should of itself be sufficient proof. I do not urge the point now, but merely suggest it in connection with the proposition made by the gentleman from Rensselaer [Mr. M. I. Townsend] to reconsider this subject.

Mr. HUTCHINS—As I understand the remarks of the gentleman from New York [Mr. Develin] he accounts for the fact that the entire registered vote was not cast at the last election upon the ground that the greater portion were prevented from putting their votes in because there was not time, or because the voters were sick or otherwise occupied. Now, the gentleman is a little forgetful of his facts. He will bear me witness, that after the presidential election of 1864 it was claimed that there were many voters in line prepared to vote, in some of the districts at the close of the election of that day, and that in some strong democratic districts they were deprived of many votes for that reason. The election districts were made by the common council, most of whom were members of the democratic party. It was therefore

be oppressive to require a man to be registered six days before election. He says a man might be sick and unable to attend. It is very oppressive also, I might say, to require a man to be present when he votes. He may be sick on election day, but the law requires him to be there in person. The requirement of the registry law is no more oppressive in one case than in the other, and certainly he will have two or three chances to be registered where he has but one to vote. It cannot be oppressive, and why do men start such unreasonable arguments against the registry law when they admit it is necessary, and also admit that there is a different class of citizens in the city than in the country? It does seem to me that we are spending a great deal of time on this matter—more than is necessary, when we all agree substantially that some kind of a registry law is necessary, and why magnify the difficulties by introducing here entirely unnecessary amendments? We might agree substantially on some kind of registry law and pass it, and not spend day after day here in talking and debating questions that will leave us in the end no better than when we commenced, questions the nature of which do not require the amount of time spent on them. It is time we should show some practical talent, at least in dispatching this work. If we continue to debate every minor question, such as we have had here this morning, we will have no Constitution to submit until after the election. I had not designed to say a word on this subject; I merely mention it as it occurs to me.

Mr. E. BROOKS—I cannot for the life of me comprehend why the gentlemen in the majority of this body are continually drawing distinctions as they do between the city and the country. Sir, I have been in favor of a registry law, and am upon the record in favor of such a law for some sixteen years past as a member of the Legislature, when there were exciting discussions upon questions of this kind. I was in favor of a registry law then; I am in favor of one to-day. I regard it just as necessary for the constituents of my friend from Jefferson [Mr. Bell] as I do for the people of the city of New York, and all that has been said on this subject is, on the one hand, in the form of a sneer toward the cities of the State, and, on the other hand, a sort of pretension on the part of the gentlemen representing the rural districts that they are, in some respects, the superiors of the gentlemen living in the city.

Mr. BELL—Will the gentleman allow me one moment? Would the gentleman require the same kind of registry law in the country as in the city?

Mr. E. BROOKS—I would, and for this reason, that, although it may be in some respects more convenient for gentlemen living in the city to register their names, nevertheless as the motive of registry is to secure a pure ballot and an honest vote, I think that every gentleman residing in the country can afford to put himself to the little inconvenience necessary to secure the most desirable end.

Mr. BELL—Is it necessary he should appear in person every year?

Mr. BROOKS—It is no more necessary in the city than in the country. There are thou-

sands upon thousands of gentlemen living in the city of New York, who have not changed their residence for ten or fifteen years past, and you have no right to impose a burden upon that class of citizens which you do not impose upon gentlemen living in the country. I am in favor of a uniform law; I am also in favor of a pure ballot, and I know of no way to secure a pure ballot unless you impose responsibilities and burdens, uniform in their character upon the people of all parts of the State. Sir, I cannot comprehend the change of opinion in this Convention between the vote that was taken to-day and the vote that was taken on Monday last. Then, by a vote of 50 to 45, we declared ourselves opposed to discriminating against the cities of the State. We have had a vote this morning of 71 against 43 in favor of this discrimination. I suppose I must attribute this great change on the part of the members of the Convention to the special edict issued by the gentleman from Onondaga [Mr. Alvord], intimating to this body that they had the power, and that it had become necessary to exercise the power. Let me remind the gentleman that upon a subject like this there may be an appeal even from this Convention to the people, and that if you desire a pure ballot-box, you have no right to enter upon these discriminations. Sir, the representatives of the minority of this Convention may justly make that appeal. It has been said also by the gentleman from Saratoga [Mr. Pond] in regard to the great cities of this State, and especially in regard to the city of New York that it may be necessary to put it under the control of gentlemen representing the interior of the State. The rural districts are now in the majority in the Legislature of the State. Let me tell that gentleman everytime the Legislature of New York has interfered with the city of New York, that the practical effect of such interference has been an immense increase of the democratic majority in that city and it will be so just so long as you undertake to exercise political power over that city. Legislative interference does not decrease the ballot there, while it has very largely increased the taxes, and the misgovernment of the city. You have given us by legislative enactments, some nine city commissions. You have given us some three local legislative bodies. You have multiplied our taxes two-fold and three-fold, and just so long as you undertake to discriminate between the city and the country, and to set yourselves up either as better than other men, or as purer than other men, just so long will you fail to accomplish any good result thereby. I hope, Mr. President, therefore, that upon the sober second thought of this Convention, the motion made by the gentleman from Rensselaer [Mr. Seymour] will prevail, and that in the end of our deliberation upon this subject there may be a uniform law throughout the State in regard to the registry.

Mr. MILLER—I did not intend when I came here to take any part in this discussion. I wish now to say but a word, and to protest against the vote which I shall give against this amendment and against the vote which I have already given in favor of striking out the clause requiring uniformity in the registry law being interpreted as any reflection upon cities or any

reflection upon the party that is in the minority here. And I will say to my friend from Albany [Mr. Parker] that in voting against requiring this law to be uniform, I am here to-day representing the democratic portion of the citizens of Delaware county as much as I am the republican portion. We do here to-day merely say this, that a registry law to be of any value at all, should be more strict for the city than for the country. A certain evil exists and it requires a remedy. That evil is not as great in the country as in the city. We want to know who are the legal and proper voters both in the city and in the country. In the country where the people are few, and where the country is sparsely settled, every citizen is known to his neighbor, is known to the inspector of election. They need not such a stringent registry law as in the city where the citizen is not known to his next neighbor. This is the reason. We require a remedy in proportion to the evil, and where the evil does not exist, we do not require that remedy. That is the whole of it. Now to say that the same remedy should be applied in the country as in the city, to my mind seems about as sensible as to require that the physicians should one day of the year prescribe uniform prescriptions throughout the State, and that no man in New York should be required to take jalap unless every man in the country was required to take it at the same time. We want a remedy to answer to the evil, and if the evil does not exist, we do not need the remedy; and I will tell the gentleman from Richmond [Mr. E. Brooks] that we are in favor of a uniform law that shall remedy an uniform evil, but where the evil does not exist, why put the burden upon the people? He is not uniform as far as the burden is concerned. In the city, the burden of registration is but slight to what it is in the country. If a man has but to walk a quarter of a mile, it takes but five minutes to be registered, and in the country he must go ten or twelve miles.

Mr. E. BROOKS — I have known people in the city of New York waiting several hours, from six in the evening till midnight, in order to vote.

Mr. MILLER — I have my information from gentlemen on this floor from New York, but I think the distance is but trifling. They have three days for registration. They can take their time, and take it out of the hours of work, but in the country they must take a whole day if the voter is required to go in person; and I ask the gentleman from Richmond [Mr. E. Brooks] why he will impose this burden upon the democrats of Delaware.

Mr. PROSSER — I offer the following amendment:

Strike out all after the word "established" in line three, and insert in lieu thereof the following: "And the Legislature shall provide that a uniform register of all the citizens entitled to the right of suffrage in such election district within the incorporated cities and villages of this State, and not elsewhere, shall be made and completed at least six days before any election, and no person shall vote at such election who shall not have been registered according to law."

It is so entirely apparent that the registration required by the committee should be confined to

the cities and the villages that I have offered this amendment excluding it from the country, and not leaving the legislative power to inflict it there. It is entirely unnecessary in the country, as has been already remarked by many gentlemen on this floor. Every voter within a town in the country is known at the polls without the formality, expense or inconvenience of being registered there. Hence I offer this amendment, and while I would not, for any trivial cause, ask the ayes and noes, I ask them on this question.

Mr. CHAMPLAIN — I trust, sir, this amendment will be adopted. If I understand it correctly, it strikes out the country entirely from the operation of any registry law, and only empowers the Legislature to apply it to cities. While, sir, I have no particular sympathy with those gentlemen who have proposed so many amendments to perfect the details of this law, yet I have steadily voted with them to accomplish such results. It is well known upon this floor that I have advocated the entire abrogation of this power, and to take from the Legislature all right or authority over this matter, confining your laws to election days. If you will look into the criminal statistics of the State, you will see that for thirty years not that number of persons have been convicted of illegal voting, while thirty or forty thousand or perhaps fifty thousand have been convicted for other crimes against property and personal security. I undertook to show that every day this board of officers sat, it cost from \$75,000 to \$100,000, and every day an attendance was required of one-fifth or one-tenth of the voters of this State, it was a tax upon the productive industry of the country, of from \$200,000 to \$400,000. And this debate has not changed my mind in this matter at all. I commit nobody to the principle that I have advocated upon this floor, but the consequences of this position I am prepared to take with the people. The gentleman from Westchester [Mr. Greeley] has told us that he does not want to send the voter to the session laws. Sir, as long as you give this power to the Legislature, you must send him there. These laws will change with the varying and changing of the political complexion of Legislatures, and they will be just as bad as the venality and partisan prejudices of those Legislatures may make them. I ask whether a registration law is to be a burden on the country or the city at such an enormous expense upon the tax payers and industrial interests of this State. What is it worth? It is shown by the declaration of the gentleman from New York [Mr. Hutchins] that sixteen thousand persons obtruded their names upon the list in the city of New York who had no right to vote, and including goats, pigs and infants two years old; and he asks why they did not vote? because they were "spotted." You cannot go to the intelligent people of my section of the State and tell them that it is right to put such a burden upon them for the purpose of empowering the Legislature to enact such laws as that. I want the announcement made to go to the country that the people may see its enormity. It is a broad macadamized road to fraud through which you can drive a coach and eight horses. Sixteen thousand illegal voters



have passed the ordeal of your commissioners of police, by whom, I believe these registry officers are appointed; and yet it is proposed to put this enormous expense upon the people of the State, and this is the poor return you make to them for it. This debate has only satisfied me that the true ground to take is to strike down this power of registration entirely, confine your laws to regulating the election, and raise the grade of this crime for illegal voting from mere misdemeanor to felony. This will tend more than any registry law to deter men from illegal voting. Throw around a registry law all the safeguards you can, but it will still be useless, as the gentleman has proved it to be by an admission of facts more forcible than any argument I can suggest. It will be an enormous expense upon the tax payers of the State, for a purpose which will prove wholly unavailing. I trust it will be stricken out of this provision.

Mr. GREELEY—The State of New York has over one thousand miles of boundary conterminous with other States and with foreign countries. A dense population is located upon its borders in several States, who are often—in Pennsylvania, at least—interested and excited about our elections. The proposition of the gentleman from Allegany [Mr. Champlain] is that any man who chooses may go forward and swear he is a voter and vote. That is the proposition, made here two or three times. I take that to be a distinct invitation to fraud—not an opportunity merely, but an invitation. We have had contested elections in this Capitol which have proved that Pennsylvanians from Pike county and Wayne, have come over and voted in Sullivan county in this State. In the election of 1844, it was not merely charged, but known, that a very large vote was thrown for President in this State by men who came from Canada for that purpose. They did not vote in the cities either, but in the rural districts. Let me illustrate by a case: The township of Clinton, county of Clinton, is almost entirely settled by Irish people—not therefore less worthy than other people—but they are intensely partisan, and their vote is probably twenty to one on one side. A large proportion of them are yet unnaturalized. You say, if here are people who are not voters, they can be challenged, and their voting stopped. Why, sir, the power of challenge is of no use without the *will* to challenge. Suppose it is desirable to put up the vote of that township from 260 to 400, by means of illegal voters, what is to prevent it? The half-dozen voters in the minority, if they venture to come to the polls at all, slip in their votes and slink away; or, if two or three of them remain, they dare not challenge that overwhelming, excited majority—intent on swelling their vote to the utmost. Where is your security against this? There are large numbers there who are not naturalized as well as those who are—all good men, I suppose, but yet violently partisan. Pretty soon, there comes a time when no one is around the polls who is not of the majority; and that gives opportunity for these men to go up and vote. Sir, the gentleman from Allegany does not represent Allegany on this question for she has always sent men here to

sustain registry laws. He says there were sixteen thousand who passed the ordeal of registration in New York last year. Yes; but they did not pass the polls. We looked over the list, and we found this man did not live where he is registered as living, and there is no house *there*, and *this* place is a lumber-yard, and so on; and those so falsely registered were marked men, and they did not dare come forward and vote. Registration is required not so much to keep names off the list as to keep out unlawful votes. If non-voters put their names on the list, and you give us six days in which to detect them, we must take the chance of their getting in their votes. But if you allow every man who may come to the polls to swear in his vote if he will, where is the security against illegal voting? We ask, "Who are you?" "John Williams." "Well, I challenge you." He swears he is a voter, and he votes; then he goes away, and is never seen there again. He has committed a felony, you say; but he is out of the State in an hour, or he is in the lower part of the city, and has voted, and at once taken ship and gone away. The object is not so much to punish the offender as to prevent men from voting illegally; and that is done, and can only be done, by a registration.

The question was then put on Mr. Prosser's amendment, and it was declared lost.

Mr. CONGER—I offer the following amendment to the section, by adding at the end thereof the following:

"But the Legislature shall not establish any laws for registry, in any city, village or town, of electors entitled to the right of suffrage in any election district therein, on any succeeding day of election, unless said laws are severally uniform in their requirements for all cities, and for all villages, and for all towns."

I propose this amendment because it provides a system of registry for towns separate from that of villages, and again distinct from that of cities, and secures a universal registration by appropriate methods for these several kinds of localities. I have taken the section as far as it has been perfected this morning and endeavored to make the best use I can of the propositions that have been inserted, which are pertinent as constitutional provisions, and have added the generic classes of registry. But I would first ask gentlemen who are so earnest in the use of the positive word "shall," what remedy they propose, in case the Legislature disobeys the mandate of the Constitution and refuses to provide any, or positively obliterates all registration laws. Is it designed to indict the Legislature as a body, or will some one man be singled out as the principal conspirator in its violation and thus exposed to infamy, or is it designed that the Legislature may, or the courts, should declare that any general election held after such refusal to pass, or such destruction of laws of registration by the Legislature, shall be null and void? In all the offers I have made heretofore, or which seems to me have been appropriately made to perfect this section, it is sufficient to inhibit the Legislature from doing certain things. On the other hand you undertake to declare what the Legislature shall do, but yet you have no remedy,



and you propose no remedy in case they violate your fundamental law. What is the fundamental law worth, in such an event as that? If I understand what the section ought to be, it should be composed of certain general declaratory provisions establishing general rights, and it should inhibit the Legislature from doing certain things, and there it should end. That has been the concurrent opinion advanced by the gentlemen who have on various parts of the amendments to this section, as proposed by the Committee on the Right of Suffrage, expressed views coincident with all authoritative expositions of the just design of a Constitution heretofore received. But we have been told this morning that we must pass certain laws for a specific purpose. Again, the whole artillery of gentlemen who have spoken in favor of these stringent provisions have been directed against a certain class of citizens, and no gentleman has been so mealy-mouthed as to refuse to say he means to discriminate against the alien as in favor of the native-born citizen. If gentlemen will take the trouble to look into the census, they will find four hundred thousand aliens recorded as living in the State of New York, and but very little more than two hundred thousand of those are in the cities of New York and Brooklyn, against which cities the whole effort of the majority here is directed to force upon them a partial registration law. Gentlemen will remember that we have distributed over the surface of this State nearly as many aliens as exist in the cities; and while they are directing their ingenuity against that class of inhabitants within their bounds, they must remember that these inventions of theirs may return to plague the inventors. My object is to secure a registration law that shall be uniform in the whole State, and also with reference to certain localities. If we can have a uniform registration law to meet the views of gentlemen who say we need one kind of registration law in the city, and another kind of registration law in the village, and another kind of registration law in the country at large, I cannot see any reason, as the gentleman from Saratoga [Mr. Pond] intimated this morning, why a man shall be free in a single county from the duty of registering his name merely because he has to ride a certain distance. Will the gentleman put the county of New York against any other county in the State? If two hundred thousand men have to travel half a mile, is there any more harm that ten thousand men should travel ten miles? Is not the physical effort in the one case just as great as it is in the other, and why shall men who insist that registration is necessary for the purpose of protecting us against the vote of the alien being unnecessarily cast when they have two hundred thousand electors scattered all through the State—why should they claim that the towns in this State should be exempt from some form of registry. I submit, sir, that if we are to have anything secured by the Constitution, it should be in a form in which the Legislature shall be debarred from any other form than that which we suppose or propose is right and proper in itself, that we shall have one form of registration for the cities, one form for the villages, and

one form for the towns at large. I propose this amendment in the hope that we may be relieved of any further embarrassment on this question, and may be enabled to perfect this section and bring the Convention to a final vote upon it.

The question was then put upon the amendment of Mr. Conger, and it was declared lost, on a division, by a vote of 44 to 58.

Mr. ROBERTSON—I offer the following amendment. Add at the end of the fourth section the following words:

“And in case of any question arising at the time of voting, as to a right to vote, the same rules of evidence in regard to evidence offered, shall be observed as are applied by courts of law to questions of fact.”

Some of the provisions of the registry laws that have been passed in this State have laid down rules in regard to evidence, that I apprehend entirely do away with the rules of evidence that apply to other questions of fact. It is necessary, at the time of the election, that the inspector should be governed in regard to the question of registry, under the law, by the same rules that are applicable in all other cases where there are disputed questions of fact between litigating parties. Therefore, I offer the amendment to meet that difficulty, and upon this general subject I would like to make a few remarks in reference to the charge which has been made here as to the excess in the registration of voters beyond the number of votes deposited. Whether the charge was intended to apply to one party or the other, and to whichever party it was intended to apply, that excess did not rise from the activity or the energy of the commissioners of police of New York in ferreting out the sixteen or eighteen thousand men who were registered, but who did not vote on the day of the election. Any one who believes that may believe any other suggestion that is incredible in modern times, or any miracle equal to those miracles recorded in our Scriptures. It arose simply from the fact that the election districts in the city of New York at the last presidential election were so few in number that persons were excluded from voting, as I can say from my own personal knowledge that from sixty to seventy were waiting at the polls, where I had stood for four hours waiting to vote, were excluded by the setting of the sun from voting for the candidates they had selected. After that the election districts were changed. A subsequent law having provided that it was only necessary to register at one election, there was no re-registering, and the list remained the same for both elections. But in the new election districts the old lists—the original registration lists—were adopted in each of these separate districts of the original and parent districts, if I may so speak, out of which the new districts were formed, so that there was great difficulty, great embarrassment to many citizens of New York to determine which district they should vote in. It is because of that, and not of the fact that the gentleman from New York [Mr. Hutchins] has suggested, that they were afraid to vote, that the sixteen or eighteen thousand registered voters did not vote. And thus this bugbear of eighteen thousand men attempting to vote without the right is exploded and destroyed. The

city of New York has lived as secure as it was before, notwithstanding this charge that has been brought against her by one of her sons.

Mr. HUTCHINS—The gentleman who last addressed the Convention [Mr. Robertson] could not have read the law of 1866. Section two of that law provided that no person in the city of New York or Brooklyn should be placed upon the registry list unless he appeared in person before the inspectors and proclaimed his right to be so registered. Under that provision, last year, a new list was made out, and every person whose name was there, appeared in person to be registered.

Mr. DEVELIN—The gentleman from New York who has just taken his seat [Mr. Hutchins], has not observed all of the law of 1866 himself. If he had read the second section, he would find that my friend from New York [Mr. Robertson] was correct in his remarks. The second section of the act of 1866 declares that the registers shall use the old poll lists; but that if the names of any new voters are to be put upon the poll list, they must appear in person. The fact stated by the gentleman from New York [Mr. Robertson] is correct; that the names of persons on the poll list of the preceding election, who had changed their residence to other election districts than the one in which they had voted, would appear upon the new registry made from the poll list of their former residence, and also upon the new registry of the election district into which they had removed, and where they had had their names registered upon personal application. It is well known that a considerable percentage of the population of the city of New York frequently changes residence, and that fact alone would account for the omission of one-half of the apparent sixteen thousand voters whose names had been registered but did not vote. The gentleman challenged me to give an instance in which a person has been unable to vote because of the numbers who had been registered in his district, and of the shortness of the time. My friend from New York [Mr. Robertson] has given an instance in his district. In the very ward in which the gentleman [Mr. Hutchins] lives there has been no change in the number of the election districts, although the population has very largely increased since 1864. I have no doubt that in the first district of that ward, with which the gentleman [Mr. Hutchins] is probably not very well acquainted, inasmuch as it is a strong democratic district, very many voters were prevented from voting, by reason of the facts that I have stated.

Mr. HUTCHINS—Mr. President—

The PRESIDENT *pro tem.*—The gentleman from New York [Mr. Hutchins] having spoken once, is not permitted to speak again under the rule.

Mr. AXTELL—I submit that the amendment of the gentleman from New York [Mr. Robertson] should not prevail. If it should prevail, it would be necessary for this Convention to provide means by which the Legislature should enact that the registers should be furnished with copies of Greenleaf, Phillipps and Starkey, in order that they may understand the laws of evidence.

Mr. ROBERTSON—I would ask whether the

inspectors are now authorized to proceed in determining cases that may arise before them contrary to the law of evidence, instead of in conformity with it.

The question was then put on the amendment of Mr. Robertson, and it was declared lost by the following vote:

*Ayes*—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Cochran, Conger, Corning, Daly, Develin, Gould, Gross, Hardenburgh, Hitchman, Law, Livingston, Loew, Lowrey, Magee, Mattice, Monell, Morris, Nelson, Paige, A. J. Parker, Potter, Robertson, Rogers, Schell, Schoonmaker, Schumaker, Seymour, Tappen, S. Townsend, Tucker, Veeder, Verplanck, Wickham—41.

*Noes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, W. C. Brown, Carpenter, Case, Cheritree, Clinton, Cooke, Corbett, T. W. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Goodrich, Grant, Graves, Greeley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Opdyke, C. E. Parker, Pond, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—78.

On motion of Mr. MORRIS the Convention took a recess until four o'clock.

#### AFTERNOON SESSION.

The Convention re-assembled at four o'clock, the President *pro tem.*, Mr. FOLGER, in the chair.

Mr. GOULD—I have received a letter to-day from my colleague, Mr. Silvester, stating that he is engaged in court and cannot be present at the sessions of the Convention until Friday next, and he asks leave of absence until that time.

There being no objection leave was granted.

Mr. C. C. DWIGHT—I ask indefinite leave of absence for Mr. George W. Curtis, who is confined to his home by reason of illness.

There being no objection, leave was granted.

The PRESIDENT announced the pending question to be on the amendment offered by Mr. Champlain to the fourth section reported by the committee as amended, on motion of Mr. Kinney.

Mr. SPENCER offered the following amendment:

The SECRETARY proceeded to read the amendment as follows:

Insert after the word "law," in line seven, the words "except electors absent from their homes in time of war, in the actual military or naval service of the United States."

Mr. SPENCER—The object of the amendment is to provide for a seeming contradiction between section 3 and the provision to which this amendment is appended. Section 3 provides for the taking of the votes of electors absent from the State, and this clause, without the amendment, prohibits any person from voting who is not registered.

Mr. CHESEBRO—I would suggest to the gen-

tleman from Steuben [Mr. Spencer] that it would be sufficient to say "except as hereinbefore provided," to save verbiage.

Mr. SPENCER—I have no objection to that, provided it is deemed sufficiently definite to embrace the class of persons mentioned.

Mr. ALVORD—In order to make it definite, I would suggest that the amendment read "except as provided in the third section of this article."

Mr. SPENCER—I accept the amendment.

Mr. WICKHAM—I think there is no reason why soldiers absent should not be registered as well as any other citizens. There is just as much liability to the commission of frauds in taking the votes of persons who are absent, when perhaps, there is no opportunity to interpose by a challenge, as there is among our own neighbors whom we know, the registry of whom we can correct if it is erroneous. There is no reason why soldiers should not be registered as any other citizens. I understand that was the rule with reference to soldiers' votes heretofore, and certainly I see no reason why it should not be continued.

Mr. E. BROOKS—I desire to add in confirmation of what my colleague [Mr. Wickham] has stated in this regard, that it is very notorious to all those who canvassed the votes which were taken in the army of the Potomac during the war, pending the election between Mr. Lincoln and General McClellan, that if there was any place where great frauds were committed, it was in taking votes in the army at that time.

Mr. ANDREWS—This amendment seems to be absolutely necessary. I don't see how we can get along without it; because if these voters—soldiers—are not here but are absent, they cannot appear to be registered; and it seems to be absolutely necessary that we should have the amendment of the gentleman from Steuben [Mr. Spencer], to enable them to vote.

Mr. GREELEY—I wish to ask the gentleman [Mr. Spencer], to accept an amendment which covers a good deal more ground, and will obviate any objections. I propose in place of his words, this: "and the Legislature shall provide for the registering of such electors as shall be unavoidably absent from the places of registry in their respective districts at the time appointed for registration." That will also cover the case of a sick person who cannot leave to personally apply to be registered.

Mr. SPENCER—I would be willing to accept the amendment if—

Mr. A. J. PARKER—I wish to suggest whether it would not be better still, and accomplish what is desired, by leaving out the clause, "no person shall vote at such election except he shall have been registered according to law."

The PRESIDENT *pro tem.*—There can be no proposition entertained except the amendment of the gentleman from Allegany [Mr. Champlain] and the amendment to the amendment offered by the gentleman from Steuben [Mr. Spencer].

Mr. A. J. PARKER—This is a substitute for that amendment.

Mr. SPENCER—I wish to have the amendment of the gentleman from Westchester [Mr.

Greeley] read again. I do not think I fully understood it when I accepted it.

The SECRETARY proceeded to again read the amendment of Mr. Greeley.

Mr. SPENCER—I withdraw my acceptance of the amendment, after hearing it more distinctly.

The question then recurred on the amendment of Mr. Spencer, and on a division the vote was announced to be 44 to 28.

A DELEGATE—There was no quorum voting.

The question was again put on the amendment of Mr. Spencer, when the vote was announced to be 47 to 30.

The PRESIDENT *pro tem.*—There is no quorum voting.

Mr. RATHBUN—I call for the ayes and noes.

Mr. VEEDER—I rise to a point of order. Can we proceed when there is no quorum, to call the ayes and noes? Can we proceed to act upon the amendment when it is declared that there is no quorum present?

The PRESIDENT *pro tem.*—The Chair did not declare that there was no quorum present.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the amendment of Mr. Spencer, as amended on the suggestion of Mr. Alvord, and it was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Axtell, Barker, Beadle, Beals, Beckwith, Bell, Bickford, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Ely, Endress, Farnum, Ferry, Folger, Fowler, Fuller, Fullerton, Goodrich, Gould, Grant, Graves, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Mattice, McDonald, Merritt, Miller, Pond, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seymour, Sheldon, Smith, Spencer, Stratton, Tappan, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—70.

*Noes*—Messrs. Barnard, Barto, Bergen, Bowen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Clinton, Cochran, Conger, Daly, Develin, Greeley, Gross, Hardenburgh, Kernan, Livingston, Loew, Lowrey, Merrill, More, A. J. Parker, Potter, Robertson, L. W. Russell, Schoonmaker, Strong, S. Townsend, Tucker, Veeder—32.

Mr. GREELEY—I move a reconsideration of the vote by which the amendment of the gentleman from Steuben [Mr. Spencer] was adopted, and I ask that my amendment be now considered.

The PRESIDENT *pro tem.*—The motion to reconsider must lie on the table under the rule.

Mr. GREELEY—There are two things to be done.

The PRESIDENT *pro tem.*—The gentleman is out of order, as the motion to reconsider cannot now be heard.

Mr. GREELEY—I am speaking to my amendment. I move to amend the section by inserting after the word "law," in line seven, the following: "and the Legislature shall provide for the registering of such electors as shall be unavoidably absent from the places of registry in their



respective districts, at the time appointed for registration."

Mr. M. I. TOWNSEND—Will the gentleman substitute the word "necessary" instead of "unavoidable?"

Mr. GREELEY—I think "unavoidable" is stronger. There are two things to be done. One is to allow soldiers who are entitled to vote to vote. That is very well. But what has just been done is to allow them to vote without being registered. In that way, we may have a thousand votes cast in a village where every one knows there are not one hundred lawful voters. I am willing a soldier shall vote provided it is determined that he has a right to vote. Let that be thoroughly established, and then let his name and his vote be taken. Give me six days, and I can scrutinize a man's right to vote. But we are here establishing the principle of letting men vote without being registered at all. We may have votes coming in by the corn-basketful, they will inundate any district in the country. I wish gentlemen would consider this. My amendment provides for the registry of men who are unavoidably absent. There are men absent in the north, in the south and in the west, and they may be too late for registry. This amendment covers the case of soldiers and everybody else. If men are known to be voters in my district, I want them to be registered, and then I want them to vote. But I do protest against the principle of allowing votes to be polled by men who are not registered—whose right to vote is not judicially established. I trust the Convention will adopt this amendment—it provides for the cases spoken of. Now, here is a man we all know to be absent, Mr. A. A. Low, who is now in China. He may come home in time to vote, but not to register. We know where he lives. And so it is with thousands of our best men. Here are men absent constructing the Pacific railroad, and they may not be home in time to register. I do hope the Convention will allow the registration, at least six days previous to election, of men whom we know to be voters, and who are unavoidably absent.

Mr. M. I. TOWNSEND—I shall vote for this amendment (though, perhaps, it is not couched in precisely the words I would have chosen), because it proposes to carry out an idea which seems to me of very great importance as affecting the subject we have been discussing to-day. I do not believe it is at all necessary to require a personal presence of the electors at the place of registration. One of my votes cast to-day—

Mr. McDONALD—Will the gentleman allow me to ask the question whether there is anything in the proposed article requiring personal presence?

Mr. M. I. TOWNSEND—That is in the law as it stands. It is not in the Constitution. It is the law as to the city of New York at the present time, and to a moderate degree it affects the city in which I live. I do not believe that for the purpose of preserving the purity of the ballot-box the requirement that the electors should attend personally at the place of registration is of one farthing's importance. I think it simply imposes a burden on the elector. The way to secure the purity of elections and of the ballot-box, is to

have the name and place of residence put up where it may be seen long enough before the day of voting to enable the claims of the person who asserts his right to vote to be scrutinized. The gentleman from New York [Mr. Hutchins] told us what occurred last year in the city of New York, notwithstanding personal attendance at the polls was actually required by law. A man had registered himself, his minor sons, down to two years of age, I think, and had registered his billygoat as voters. Now, although personal presence is required, anybody could simulate a name that was to be put on the list. But when the list is scrutinized, and people are looking to see that a man does not vote unless he is entitled to vote, the fact would be found out that those sons were minors, and that this creature registered with them, was not a human being but an animal. That is the case in my own town. I speak in regard to the subject with considerable confidence, from the fact that the ward in which I live is as difficult to manage as any place out of the city of New York, or in the State of New York, and we know where it is we found our strength. We found we could reduce a vote of eleven hundred down to between seven hundred and eight hundred, by simply knowing where it was claimed a man lived. If we did not know his face we learned whether such a man lived at the place where he claimed to live. Frauds at elections are not to be avoided by stringent laws requiring the personal attendance of the elector at the place of registration. It is a very great hardship under such a law, if a mechanic is a hundred miles from home he must travel that distance to register his name, to be able to vote on the day of election. So with clerks in the employ of a merchant, one thousand miles from home; they must spend the whole intermediate time between the day of registration and the day of election, at their homes, if they wish to vote. It is a great burden. No important good can grow out of the mere fact of their personal presence at the registration. Believing so, I voted as I did once this morning when I proposed to make this provision uniform throughout the State, and I shall vote for the pending proposition.

Mr. RATHBUN—If this amendment prevails, the best thing we can do, I apprehend, is to strike out all we have done this forenoon in regard to that section. If this provision was to be carried out just as read and applied to the persons necessarily and unavoidably absent there would be a seeming propriety, and a great amount of liberality in it. But under that clause a thousand men could claim they had been unavoidably kept away from home and could not possibly get back to be registered until after the six days had been trampled upon and the time for scrutiny had passed.

Mr. GREELEY—I am sure I have not proposed that any man should vote who is not registered six days before the time of election.

Mr. RATHBUN—I understood that to be the meaning of the amendment as it was read.

Mr. GREELEY—It provides for a registry at a proper time.

Mr. RATHBUN—The gentleman is talking about honest men being absent at the period of



registering. But he does not see that all the rogues in the country, everywhere, could take advantage of that very thing; they could pretend that they had been from home; they could surround the place of registry on the day before the election, and hundreds upon hundreds would be registered, under a provision made to accommodate merchants and clerks traveling about the country. I hope gentlemen are not going to eviscerate the provisions of the section thus far secured. If they do they had better abandon the whole thing. In regard to personal attendance, it has been said to be a great hardship in New York. A year ago last fall I made a mistake in getting to the polls. I found them closed a little before sundown, as I thought, but I was a little too late, and before I could vote last fall I had to personally attend upon the registrars and ask them to put my name on the list of voters. They consented to do so, and I voted afterward. That is the way of it in the little city where I reside, and that is the hardship that the gentleman from Rensselaer [Mr. M. I. Townsend] talks about, and which the people of New York and Brooklyn have to encounter. I cannot say that I have suffered very much in traveling thirty or forty rods out of the way to have a board of registry put my name down. I cannot exactly see how anybody has. In this registry law we must have general rules for the government of the great body of the people. Now there will be accidents. Men will be kept away from home but not on one side only. Men will be sick, but not sick in one party alone. There will be sick men on both sides, and each side will lose votes. If a man resides in the State of New York, but is outside of the State, and moving toward his home, intending to arrive before the election, the cars run off the track and he is too late, it is a great hardship that he should lose his vote for such a cause. But is it necessary that we should provide against these accidents which occur, to prevent a man's presence at home to register in time, to allow his voting at an election? We must adopt general rules. Both sides will suffer equally from untoward accidents. If we attempt to provide for all these details, we will fritter away the whole thing, and will finally be as bad off as though we had no registry law.

Mr. HAND — I do not know that I understand the proposed amendment of the gentleman from Westchester [Mr. Greeley] or whether I am mistaken. Does the amendment provide that those persons who are unavoidably absent from home shall be registered six days before the election by their friends. I so understand it.

Mr. GREELEY — That is substantially the provision.

Mr. RATHBUN — That does not improve it a particle; it makes it rather worse.

Mr. DUGANNE — I move to amend by striking out the word "unavoidable."

The PRESIDENT *pro tem.* — The amendment is out of order, there being two amendments pending.

Mr. CHESEBRO — I call for the ayes and noes.

A sufficient number seconding the call, the yeas and nays were ordered.

The question was then put on the amendment

of Mr. Greeley, and it was declared carried by the following vote:

*Ayes* — Messrs. Archer, Barnard, Barto, Bergen, Bickford, E. Brooks, E. A. Brown, W. C. Brown, Burrill, Cassidy, Champlain, Chesebro, Church, Clinton, Cochran, Conger, Corning, Daly, Develin, C. C. Dwight, Ferry, Flagler, Fullerton, Greeley, Gross, Hale, Hand, Hardenburgh, Kernan, London, M. H. Lawrence, Livingston, Loew, Lowrey, Magee, Mattice, Merritt, Monell, More, Nelson, Opdyke, Paige, A. J. Parker, Potter, Prosser, Robertson, L. W. Russell, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, M. I. Townsend, S. Townsend, Van Campen, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham—62.

*Noes* — Messrs. A. F. Allen, C. L. Allen, Alvord, Axtell, Baker, Barker, Beadle, Beals, Beckwith, Bell, Bowen, Carpenter, Case, Cheritree, Cooke, T. W. Dwight, Eddy, Endreas, Farnum, Folger, Fowler, Fuller, Goodrich, Gould, Grant, Graves, Hammond, Harris, Hitchcock, Houston, Hutchins, Ketchum, Kinney, Krum, Lapham, A. Lawrence, Lee, Ludington, McDonald, Merrill, Miller, Pond, Prindle, Rathbun, Reynolds, Root, Rumsey, Sheldon, Sherman, Spencer, Van Cott, Williams—52.

Mr. DALY — It seems to me we have occupied the principal part of the day in the attempt to pass a registry law. That, in my judgment, is a matter of detail, belonging properly to the Legislature. I therefore offer the following amendment:

The SECRETARY proceeded to read the amendment as follows:

SEC. 4. There shall be, throughout the State, a registration of all persons entitled to vote. Laws for that purpose shall be enacted by the Legislature, which shall be uniform in their requirements throughout the State.

The PRESIDENT *pro tem.* — In the opinion of the Chair the amendment of the gentleman [Mr. Daley] is not in order.

Mr. ALVORD — I move to reconsider the vote just had, by which the amendment offered by the gentleman from Westchester [Mr. Greeley] was passed.

The PRESIDENT *pro tem.* — The motion lies on the table under the rule.

Mr. SEYMOUR — I offer the following amendment, to come in at the end of the section:

"Personal attendance of an elector upon registration shall not be required."

The object of the Convention seems to me to be to provide for the enactment of a registration law, through the Legislature, which shall preserve the purity of the elections. During all the discussion upon the various amendments that have been presented I have not been able to conceive why it is necessary that an elector shall be required personally to appear upon registration day that his name may be enrolled. There seems to have been a difficulty in reconciling the feelings of the country with those of the cities. Let us consider it in that aspect. Is it necessary in the country that there should be a personal attendance? Those who are familiar with the mode in which registration has been had in the country know very well that it is the fact in almost all the country districts,

that the electors are known, and if new names be added to the list, a period of six days suffices to notify the whole town or district in which these people are to vote, that such and such persons have been entered on the list and propose to vote at the election. The list is scanned and it is ascertained then whether these persons are really electors or not, and the public are ready on the day of the election to determine it, and interpose a challenge if necessary. The trouble seems to be in our cities. You take the city of New York. It is said that the people there do not know the place of residence of the persons whose names are given in the registry. Pray how do they determine upon the day of election who is to be challenged and who is not to be challenged? It is by subsequent inquiry that the duty to challenge is to be ascertained. It is during the six days that the name of the person registered stands upon the list, notifying the whole public in the district where he is to vote, that he intends to vote. That is the way that his right to vote is ascertained. Now, does it depend at all upon accident whether he has been presented for the purpose of having his name registered? Not in the least. Nor does his coming there and presenting his name in any considerable degree identify him. When the day of election shall come, the question whether he is really an elector or not is decided upon information obtained within the six days that his name remained for the inspection of the public. The gentleman from Westchester [Mr. Greeley] has truly said that is the principal point of the efficacy in this law. Then why should we require the laboring men in our cities to be at the inconvenience of appearing personally and having their names registered? I understand it has been the practice in some cities, —in the city of New York, for instance, and it is a very great inconvenience. Now, I wish to have inserted in the provisions on this subject a provision like that one which I have embodied in this amendment, that no law should impose this burden on a citizen. It is not necessary for the purpose of preserving the purity of election. The right of a voter is ascertained otherwise, as I have shown, and the test comes upon the investigation made in the six days preceding the election, and that test is applied on the day of the election.

Mr. SCHUMAKER—I am very sorry to disagree with the gentleman from Rensselaer [Mr. Seymour]; but I really think that the liberal amendment offered by the gentleman from Westchester [Mr. Greeley] covers all the objections he has recited. I know from my own experience that if a man can, the best way for him is to register his own vote. Then there is no mistake about the house he lives in or the number of the street or locality in which he is a resident. Heretofore, there has been a great deal of unnecessary registering; the registry list has been incumbered to a great degree. As I said at the commencement of my remarks, I think the liberal amendment of the gentleman from Westchester covers all the cases of necessary absence, also absence on account of sickness, or of being employed as laboring men in different portions of the country or State from that where the registry is going on, and I hope it will be adopted.

Mr. ROBERTSON—I have always understood the registry law to be a mere claim of the title to vote. On the first entering of the names on the record of the parties who register, I do not understand there is any right of investigation on the part of those who have the registry in charge. If they do not know a man they can inquire after the list is made out, as to his home, his *personnel*, and other matters. Then is the time to investigate whether or not the parties claiming a right to vote shall be allowed to vote. You thus take away the necessity, on the day of election, when a party presents himself for the first time to vote, of inquiring into such matters at that time. This registry is merely for the purpose of presenting his claim to the right to vote. There is nothing determinate by the registry of a man's claims to the right to vote, he not being entitled to a vote otherwise. It is therefore nothing more than a registry of this kind, to be had before the question is tried whether or not he has the right to vote. Therefore I can not see the necessity of a party appearing in person. Of the myriads who present themselves but very few are known to the authorities who have charge of the registry. Hence, it would be perfectly absurd for them to exclude any one on the ground they do not recollect his face, or include him on the ground they do recollect his face. When he presents his name and his habitation, persons who are interested can investigate whether he has the right to vote at the election. I can see no reason why he should present himself before a tribunal who have no right to exclude him or include him in the electoral list.

Mr. VAN CAMPEN—As I understand this section, there is no provision in it that requires the personal attendance of a man in order that he may be registered. As it stands it provides he shall be registered and at least six days before the election, and shall not be allowed to vote without such registration. But there is no provision requiring personal attendance for registering. It is for the reason that I do not wish to have here prescribed what rules as to details shall obtain that I shall vote against the amendment offered by the gentleman from Rensselaer [Mr. Seymour]. It provides for just exactly what every man ought to desire who wants an honest election. It provides for exceptional cases of those who are compelled to be away at the time of registration, and that the registration shall take place six days before the election. It seems to me the case must be all covered as it stands now. I shall therefore vote against any further tinkering of this article.

The question was put on the amendment of Mr. Seymour and it was declared lost.

Mr. POND—I move to amend the section by substituting therefor the following:

SEC. 4. Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established. And the Legislature shall provide that a register of all citizens of the State who shall be entitled to the right of suffrage in each election district, on the ensuing day of election, shall be made or completed before said election and at least six days before any election, in all the cities and incorporated villages of the State, and in all the other

portions of the State, at such times and manner as shall be provided by law.

Mr. ALVORD — It seems to me that this will clear the whole of this matter of any cloud that may be around it, by reason of the divers and sundry propositions suggested from time to time in this Convention to-day. It strikes me that almost the entire of the argument which has been heard here, could with greater propriety have been given before a legislative body, rather than before a body like this Convention, having for its object the making of the organic law of the State. I would be entirely satisfied to stop even short of what the gentleman has stated in this regard, and leave it where it was left originally this morning, leaving out the last portion, "that such laws shall be uniform in their requirements throughout the State." It seems to me to be satisfactorily demonstrated, and that it ought to be agreed to on the part of all men in this Convention, that there should be uniformity of registration; in other words, that there should be registration of voters throughout the length and breadth of the State, with an equality of the workings of that registration, so far as regards its applicability to localities, and differing as regards cities and the country. Now, we fix the fact beyond controversy by the amendment offered by the gentleman from Saratoga [Mr. Pond], that there should be a registration of the voters of this State completed at least six days before the election in all incorporated cities throughout the State, but, so far as regards the country, leaving that to the Legislature. Now, it strikes me that this is what should obtain. We will get then what we desire, a registration of voters. If we get a registration of voters, we should leave the manner in which that registration shall be completed, so far as regards the country, to the Legislature. So far as regards the aggregation of individuals in cities and incorporated villages, time enough should be given for examining the record that is made before election. In the country there is no particular desire for this, because, as has been said again and again, there is abundant means of knowing who are the electors when they come to the polls. In the absence of general topics of conversation and inquiry, they talk about their neighbors. They know where they live; they know how many hired men their neighbors have and how many sons they have. In cities we know not our next door neighbors. They are constantly passing before us like the waves of the sea — here this moment, away the next. It is for that reason we desire a length of time before the election sufficient to satisfy us that parties professing to reside in our immediate midst have the right, the same as ourselves, to go to the polls and vote. In this view of the case, it strikes me the proposition removes all the difficulties around the various amendments proposed here to-day. In my opinion, the amendment offered by the gentleman from Westchester [Mr. Greeley], had better been offered earlier in the morning. If it had obtained the sanction of the majority of this Convention, it would have saved us all the trouble we have been laboring under from early morning until now. It is merely taking the back

track—going away back to the same position from which we started, and attempting to eliminate from this article this idea of uniform registration. It is a mere rehash of more than half a dozen amendments we have been voting down consistently and continuously during our labors this day. I trust, therefore, excluding everything else, the simple, plain proposition of the gentleman from Saratoga [Mr. Pond] will obtain the approbation of this Convention.

Mr. DALY — I agree entirely with the gentleman from Onondaga [Mr. Alvord]. When the amendment offered was ruled out by the Chair, I supposed it was on the ground of a previous proposition which had been passed upon. I propose to express more briefly than the gentleman from Saratoga [Mr. Pond] what I suppose is the proper course on this subject, that is, to leave the whole subject to the Legislature after providing expressly for the general registration of the voters of this State, substituting for section 4 words to this effect: "There shall be a registration of all persons in this State who are entitled to vote, and laws for that purpose shall be passed by the Legislature," leaving it entirely for the Legislature to fix the details of those laws. I think we are passing out of the region of fundamental law and occupying time by passing what is known as legislative law in the various amendments which have been proposed during the course of the day. If the action of the Convention upon the amendment offered by the gentleman from Saratoga [Mr. Pond] should be unfavorable to it, I then propose to offer this amendment, which will briefly express that after providing for a general registration all the details on this subject shall be left to the Legislature.

Mr. GREELEY — What will be the condition of the voters of this State, if the amendment is adopted? They all know they have to be registered; the Constitution will tell them that. But I want the Constitution to read plainly that they must be registered six days before the election, otherwise a man may next year present himself before a board of registry: "I want to be registered." It is Saturday before election. "You cannot be registered." "Why, it is only three days before election. I registered on Saturday last year." "Yes; but the law has been changed since then." Thus you will have voters trapped all over the State. All voters do not and cannot know every law that is passed by our Legislature from year to year; but they may be fairly required to know what is plainly set forth in the Constitution. I pray that you will not entangle the voters in this net. I ask that there may be not only one law for the country and the city, but that the voters of our State be protected against this peril of losing their votes by annual changes of law. This year, the interval between registering and voting will be extended; next year, it will be shortened. Consequently, you may have fifty thousand voters who will need to know what they have to do in order to establish their right to vote. The Constitution should be plain on this point. We ought to leave as little as possible subject to change by annual legislation. I trust there will be no change of the article in this respect. Let us not establish the principle that the Legisla-



ture may change from day to day the conditions upon which a voter can exercise the right of suffrage. Let us stand fast by the good we have done.

Mr. TAPPEN — I believe from the votes which were cast this morning, that it was intended to restrict registration to the general elections. Therefore I propose to amend by inserting after the amendment of the gentleman from Saratoga [Mr. Pond], the word "general."

The PRESIDENT — It is not in order.

Mr. DEVELIN — I rise to ask whether this amendment of the gentleman from Saratoga [Mr. Pond] proposes there shall be a registration for all elections.

The PRESIDENT *pro tem.* — As far as the Chair is informed, it is not restricted to any election.

Mr. DEVELIN — Is it not in conflict with the vote we took this morning, confining it to general elections?

The PRESIDENT *pro tem.* — The Chair is of opinion that it is.

Mr. DEVELIN — Then I submit that it is out of order.

The PRESIDENT *pro tem.* — The opinion of the Chair is that it is in order, as it includes much more than that.

Mr. TAPPEN — Will it not be in order for me to move to amend that amendment?

The PRESIDENT *pro tem.* — The Chair is of opinion that it will not.

Mr. TAPPEN — Will the gentleman accept my amendment?

Mr. POND — No, sir; distinctly not.

Mr. BURRILL — I would like to ask the mover of this amendment a question, that is whether or not he designs by it to provide a time when the registration shall be completed in cities and villages before election, and not to provide any time when it shall be completed in other portions of the State?

Mr. POND — That is the amendment I have sent up. In the cities and incorporated villages the time shall be six days; in other portions the manner and time shall be fixed by law.

Mr. BARKER — Does the gentleman intend by that that no elector shall vote unless his name is registered?

Mr. POND — Yes, sir.

Mr. BARKER — He has not said it very plainly.

Mr. POND — Not very. [Laughter.]

The PRESIDENT *pro tem.* announced the pending question to be on the amendment of Mr. Pond.

Mr. DEVELIN — I called for a division of the question.

SEVERAL DELEGATES — No! no!

Mr. DEVELIN — There are so many "no-noes" around here that I will withdraw my call [Laughter].

The SECRETARY proceeded to call the ayes and noes on the amendment of Mr. Pond, and it was declared lost by the following vote:

Ayes — Messrs. A. F. Allen, Alvord, Archer, Baker, Beadle, Eddy, Endress, Farnum, Fowler, Fuller, Gould, Hand, Hitchcock, Houston, Krum, Landon, Lee, Ludington, McDonald, Merritt, Opdyke, Pond — 22.

Noes — Messrs. Andrews, Axtell, Barker, Barnard,

Barto, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Case, Cassidy, Champlain, Cheritree, Chesebro, Clinton, Cochran, Conger, Cooke, Corbett, Corning, Daly, Develin, C. C. Dwight, T. W. Dwight, Flagler, Folger, Fullerton, Goodrich, Grant, Graves, Greeley, Gross, Hadley, Hale, Hammond, Harris, Hitchman, Kernan, Ketcham, Kinney, Lapham, Law, A. Lawrence, M. H. Lawrence, Livingston, Loew, Lowrey, Magee, Mattice, Merrill, Miller, Monell, More, Morris, Nelson, Paige, A. J. Parker, Potter, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rolfe, Root, Rumsey, L. W. Russell, Schell, Schoonmaker, Schumaker, Seymour, Sheldon, Smith, Spencer, Strong, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham, Williams — 94.

Mr. DALY — With the view of bringing this matter to a termination if possible, and to get through with this section I offer the amendment I suggested:

The SECRETARY proceeded to read the amendment as follows:

Strike out all after the word "establish" and insert the following: "The Legislature shall provide for a registry of all citizens entitled to the right of suffrage in each election district, to be completed at least six days before any general or municipal election. No person shall vote at any such election, unless registered as herein provided."

Mr. VEEDER — I should think, Mr. President, from the language of the amendment offered by the gentleman from New York [Mr. Daly], that it simply requires the passage of an act for registration by the Legislature six days before the election, and that the time does not refer to the registration of voters, although the gentleman undoubtedly intended that it should.

Mr. DALY — I move to make it six days, which will obviate the difficulty.

Mr. ROBERTSON — It requires at least six days.

Mr. A. J. PARKER — The same difficulty occurs in reference to this amendment that there is in the original section in this respect. It provides that no person shall vote unless registered as herein required. It makes his right to vote to depend upon the action of the Legislature. True, it requires that the Legislature shall provide registry laws, and so did the original section; but suppose the Legislature fails to do so; is the citizen to be deprived of his right to vote in consequence of that? I suggest this as an objection to the amendment and to the section itself, that it may be provided for, either by striking out the section or providing that such shall be its effect after the Legislature shall have passed laws regulating the registry. The section provides that the Legislature shall provide a law in regard to the registry. If it fails to do so—

The PRESIDENT *pro tem.* — Then there is no law.

Mr. A. J. PARKER — And then they are not registered according to law and have no right to vote. If they have no law and are not registered according to it, of course they are precluded from voting.

Mr. RATHBUN—I wish to inquire in regard to that amendment. As I understand it, it comes in at the end of the third line. I wish to inquire what the effect would be, if this amendment was adopted, upon the previous amendments which have been adopted?

The PRESIDENT *pro tem.*—The Chair understands that it would take the place of all previous amendments.

Mr. RATHBUN—Then I am in favor it.

The question was then put on the amendment of Mr. Daly, and it was declared carried. The ayes and noes were called for on the amendment, and a sufficient number seconding the call, they were ordered.

Mr. VEEDER—I rise to a point of order. My point of order is that this is substantially, indeed, almost word for word, reinstating the printed section that has been before the Convention, and thus, in an indirect manner, reconsidering on the spot the vote that was taken embodying in that section the provision that the Legislature shall provide for the registration of electors who were unavoidably absent.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the amendment of the gentleman [Mr. Daly] is in order as it proposes to substitute the word "municipal," which has not heretofore been used.

Mr. DALY—I am willing to substitute any matter which has been heretofore adopted by the Convention as a part of the amendment if it is necessary.

Mr. KETCHAM—I desire to suggest that the amendment proposed by the gentleman [Mr. Daly] be made a substitute for the whole section. There seems to be no necessity for the first clause of the section with that amendment.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the amendment offered by the gentleman from Wayne [Mr. Ketcham] is not in order, there being two amendments pending.

Mr. T. W. DWIGHT—I would like to read a substitute which perhaps the mover will accept. It is this: "Laws shall be made for ascertaining by proper proofs, which shall be made and completed, at least six days before any general election of the citizens who shall be entitled to the right of suffrage hereby established, and after such registration—

Mr. ALVORD—That leaves out the word "municipal."

Mr. T. W. DWIGHT—I will put that in if it is desired.

Mr. DALY—I do not accept the substitute.

Mr. DEVELIN—I desire the mover of the amendment to inform me what will be the effect if that amendment is adopted—

The PRESIDENT *pro tem.*—The discussion is not in order. The gentleman [Mr. Develin] can speak to the amendment of the gentleman from New York [Mr. Daly].

Mr. DEVELIN—It was my desire to speak in regard to that. I desire to ask the mover of the amendment what would be the effect of that amendment, if adopted, if the Legislature did not pass any law on the subject? Would anybody vote?

Mr. ROBERTSON—I would suggest to the

mover of the substitute to insert the words "when and" before "as" so that it will read "when and as required by law." That I think will meet the suggestion of the gentleman from Albany [Mr. A. J. Parker], and the gentleman from New York [Mr. Develin].

The PRESIDENT *pro tem.*—The Chair must rule that this desultory conversation is out of order.

Mr. GREELEY—I still desire to know whether the adopting of this amendment will strike out the one we have just adopted, which provides for the registering of voters who are unavoidably absent.

The PRESIDENT *pro tem.*—The Chair is of the opinion that if this is adopted, it will strike out all after the word "established" in the third line.

Mr. GREELEY—Then I must vote against it.

Mr. SCHUMAKER—Mr. President—

Mr. RATHBUN—I rise to a point of order. The ayes and noes have been called, and a member had answered to his name.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the gentleman from Kings [Mr. Schumaker] is in order, if he desires to speak on the amendment offered by the gentleman from New York [Mr. Daly].

Mr. SCHUMAKER—I do. In the present Constitution we have a provision in reference to the registering of voters. The Legislature of this State in the face of this provision has provided that no one can register the name of the voter except the voter himself. I was very glad to hear the proposition come from the gentleman from Westchester [Mr. Greeley], that this in some way should be remedied. If the Legislature, in the face of a plain provision to register, says that a voter must register himself, and if he does not, he cannot vote on election day, I think the Convention should put in the Constitution a plain provision preventing them from passing any law disfranchising citizens of this State who are necessarily absent or sick.

Mr. LAPHAM—Will the gentleman from Kings [Mr. Schumaker] inform me in what part of the Constitution he will find a provision for registration.

Mr. SCHUMAKER—I think there is in the present Constitution such a provision. Will the gentleman from Westchester [Mr. Greeley] come to my assistance and state where it is? What I refer to is section 4 of article 2, which reads thus: "Laws shall be made for ascertaining by proper proofs the citizens who shall be entitled to the right of suffrage hereby established." That is just the same. They have passed the present registration law which we have in existence, and founded its constitutionality upon that very provision. The courts have decided, I think, that the first law of the Legislature in 1858 was constitutional under that provision. Upon that provision of the Constitution they passed the present law for ascertaining the persons who are entitled to vote; and if they give us such bad laws under that provision, there ought to be, I say, some provision in the Constitution preventing them from passing any laws which shall

prevent a voter unable to attend and be registered, by reason of sickness or absence, from having his name registered by others. I think that this Convention should see to it that the provisions of the Constitution are plain upon that point. That is the only objection I have to the amendment of the gentleman from New York [Mr. Daly]. I think that the provision moved by the gentleman from Westchester [Mr. Greeley] covers the ground.

Mr. E. A. BROWN—It seems to be assumed that the registry law as it now stands requires in the cities of New York and Brooklyn that every voter should appear personally before the board of registry. There certainly is no such thing in the law and there never has been such a requirement in the law as I have read it. It is only on the final completion of the registry, on the last day when they meet; that names are prohibited from being added without the personal appearance of the voter.

Mr. VEEDER—I call the attention of the gentleman [Mr. E. A. Brown] to the seventh section of the statute in reference to the cities of New York and Brooklyn, which reads as follows:

"In the cities of New York and Brooklyn the name of no person shall be placed upon the said register unless he shall appear in person before the said inspectors and prove to their satisfaction his right to vote at the next election in the election district in which he claims the right to so vote."

Mr. E. A. BROWN—It provides that they shall make up the registry list from last year's poll list. That provision which the gentleman [Mr. Veeder] cites is simply applicable to the last day, when they finally complete the registry. In making up the registry they take the list of last year, and then, on the last session of the board, this rule applies, that no person can be added except they personally apply.

Mr. VEEDER—I desire further to correct the gentleman. He is mistaken in his statement in reference to the statute. I have read the statute word for word, as it is enacted.

The PRESIDENT *pro tem.*—The gentleman from Kings [Mr. Veeder] is out of order, he having already spoken.

Mr. E. A. BROWN—I have called attention to the law as I understand it, and I have certainly labored very hard three or four times to understand it, in localities where this provision was supposed to apply, and it will take a man a week to look it through, but I simply desire to call the attention of the Convention to the subject.

The roll was called on the amendment of Mr. Daly, and it was declared adopted by the following vote:

*Ayes*—Messrs. A. F. Allen, Alvord, Andrews, Archer, Artell, Baker, Barker, Beadle, Beals, Beckwith, Bickford, W. C. Brown, Carpenter, Case, Cheritree, Clinton, Corbett, Daly, C. C. Dwight, T. W. Dwight, Eddy, Endress, Farnum, Flagler, Folger, Fowler, Fuller, Fullerton, Gould, Grant, Graves, Gross, Hadley, Hammond, Hand, Harris, Hitchcock, Huntington, Hutchins, Ketcham, Kinney, Landon, Lapham, A. Lawrence, M. H. Lawrence, Leé, Ludington, McDonald, Merrill, Merritt, Miller, Pond, Prosser, Rathbun, Rey-

nolds, Root, Rumsey, L. W. Russell, Sheldon, Sherman, Smith, Spencer, Stratton, Van Cott, Wakeman, Williams—66.

*Noes*—Messrs. Barnard, Barto, Bell, Bergen, Bowen, E. Brooks, E. A. Brown, Burrill, Cassidy, Champlain, Chesebro, Cochran, Conger, Cooke, Corning, Develin, Greeley, Hale, Hardenburgh, Hitchman, Kernan, Krum, Law, Livingston, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Nelson, Opdyke, Paige, A. J. Parker, Potter, Prindle, Robertson, Rolfe, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wales, Weed, Wickham—53.

Mr. VEEDER—I move to reconsider the vote by which the amendment of the gentleman from New York [Mr. Daly] has just been adopted.

The motion was laid on the table.

Mr. T. W. DWIGHT—I desire to move the amendment which I offer.

"Laws shall be made for ascertaining by proper proofs and by registration, which shall be made and completed at least six days before any general election, the citizens who shall be entitled to the right of suffrage hereby established, and after such registration laws have been enacted, no person shall vote at such election who shall not have been registered according to law."

It will be seen that the object of this amendment is to leave the regulation of this subject to the Legislature, with the exception of securing the six days, provided, the right to vote shall not be affected until the registration law shall have been enacted.

The question was then put on the amendment of Mr. T. W. Dwight, and it was declared lost.

Mr. HALE offered the following amendment:

"All registry laws shall be uniform throughout the State, except the cities and incorporated villages thereof; and they shall also be uniform in all the cities and incorporated villages of the State."

I wish to state very briefly the motives with which I offer this amendment. The report of the Committee on the Right of Suffrage, and also the report of the Committee of the Whole have adopted this language: "But such laws shall be uniform in their requirements throughout the State." A majority of the Convention voted in favor striking out that portion of the report. I voted with the majority. But the only reason I have heard for objecting to that provision is that there must be injustice in requiring the same strictness in sparsely populated portions of the State that we do in cities and villages. There are many provisions which would be extremely inconvenient for persons who reside in my part of the State for instance, which might be complied with without inconvenience by residents of cities and villages. I have heard no other reason except that, and that is a reason which applies to all cities and incorporated villages, and an objection which applies equally to all other parts of the State. I submit, therefore, that this amendment will meet the only objection which has been raised against this provision in the Committee of the Whole, and secure positively, uniformity of registration which may be had upon this plan.



Mr. ALVORD—I would suggest to the gentleman from Essex, [Mr. Hale] that in very many incorporated villages, of this State, the election districts run outside of the villages into the country, and take in a large portion of the country. Indeed, I hardly know an exception in the limits of the State. It, therefore, strikes me that if the gentleman desires uniformity, he should accept my suggestion, so that it might read "except those in which the election district is part village and part country," or leave "villages" out entirely, which would be still better.

Mr. HALE—I have no objection to accept that.

Mr. HARDENBURGH—I would ask the gentleman from Onondaga [Mr. Alvord] if the amendment just adopted did not include municipal corporations also.

Mr. ALVORD—If the gentleman will permit me a moment: certainly it did, but it has reference to municipal elections and general elections, where the limits of a district extend beyond the village.

The question was put upon Mr. Hale's amendment, and it was declared lost.

Mr. LAPHAM—I move to amend the amendment of Mr. Daly by inserting after the word "general" the word "special," so that it will read "general, special and municipal." The amendment as adopted fails to provide for the cases of special elections which may be ordered in many instances, and to which the principle of registration applies equally as well as to general elections; and I think the amendment I have suggested should be adopted.

Mr. BARKER—Will the gentleman allow me to ask him a question? If the word general does not apply to elections in which all may participate, and not to any local or municipal election, special elections would apply in that instance, so there would be a new registration.

The question was then put on the amendment of Mr. Lapham, and it was declared carried, on a division, by a vote of 54 to 40.

Mr. VERPLANCK offered the following amendment:

"When a person entitled to the right of suffrage shall be registered in any election district, his name shall be kept on the register of said district so long as he shall remain a resident thereof."

Mr. VERPLANCK—Under the amendment which has been adopted requiring registration for municipal and special as well as general elections the electors of the city of New York will be engaged a considerable portion of the year in the business of registry. Electors who are registered as voters at general elections, will have to be registered for municipal and special elections. I deem it therefore proper that this amendment should prevail. An elector who has been registered in his district, should not be obliged to go through the trouble of being registered again so long as he remains a resident of the same district. If an elector registers his name to-day there is no reason why he should be required next Spring or any other time so long as he remains a resident of the district to be again registered. Registry laws interfere with the right, which gentlemen have been pleased to term a natural and

an inalienable right, and while electors it seems must submit to a registry law I insist that it shall be a plain, practical and fair law, and designed to answer the purpose for which it is enacted. The gentleman from Westchester [Mr. Greeley] insists that a registry should be had of all persons who claim they have a right to vote, so as to ascertain whether those persons are entitled to vote in the district in which they are registered. But when you undertake to do anything more than this, you commit violence upon the right of suffrage. Mr. President, I am opposed to leaving to the Legislature the establishment of the registry law. I had in my mind when I prepared this amendment, the action of a former Legislature, but I did not care to have the attention of the Convention particularly called to it; but you know, Mr. President, and I know, that some of the Legislatures have attempted, under the guise of a registry law, to interfere with the right of suffrage. A former Legislature provided that no man born out of the country should be registered unless he produced his naturalization papers. The object and design of it was to prevent registration, and what was the effect? Naturalized citizens who had lost or mislaid their papers, could not get their names registered. There were boards of registrars who insisted that every man who was born abroad and claimed a right to vote, should produce his naturalization papers. A person under eighteen years of age when his father was naturalized, is by law a voter, when he comes of age and needs no such papers, yet thousands of such persons were refused registration because they could not produce naturalization papers. I know the fact personally that in the city of Buffalo many such persons actually took out papers in order to avoid this objection. Such requirements are wrong, and an outrage upon this right, and this Convention should, as far as possible and practicable, settle the law of registration, and make it as easy as possible for the elector. In the first place provide that six days before election the elector shall be registered, and when thus registered, his name shall remain upon the register so long as he remains a resident of the district. I see no good reason why men in our manufacturing establishments, or in other industrial pursuits, should be required from year to year to lose their time in attending a board of registry when they are well known to everybody in the district as qualified voters.

Mr. RATHBUN—I hope, sir, we will get through legislating pretty soon, and take up the matters we are sent here to attend to—that is, to form a Constitution. The last amendment contains not only enough, but in my judgment more than should have been put in. Now we have an additional proposition from the gentleman from Erie [Mr. Verplanck], to legislate and to provide by law that if a man is upon the registry one year, he is to stand there as long as voting is maintained in the State, I presume.

Mr. VERPLANCK—That is the law now.

Mr. RATHBUN—I beg your pardon. Whether a man votes or not, according to the resolution of my friend from Erie [Mr. Verplanck], whether he

is properly registered or not, whether it is a cheat or fraud to put his name on the registry, it is to stand there until somebody can be found to occupy his place and vote for him. It is not to be taken off, but his name will stand there and he will be entitled to vote. The whole thing is perfectly absurd, in my judgment, for a Convention forming a fundamental law of the State to go on inserting provision after provision with regard to the rights and privileges of an elector, and undertake to define all his rights, and prescribe by law for the whole thing in the Constitution itself. Gentlemen are so much afraid of the Legislature that they cannot even be trusted to pass laws to regulate the rights of suffrage, because they may possibly pass laws which are a hardship upon somebody. Hardships upon somebody bear upon both sides, which gentlemen seem to forget, they talk as if the person talking represented only the person wronged. The provisions operate not upon one side but upon all parties, and does the gentleman from Erie believe that anybody here designs to do injustice to the people who are to pass upon this question, and that we are about to create a Constitution which must operate prejudicial to one side and beneficial to another. The thing is absurd. Parties, to be sure, are divided now—and divided in a manner which gives, as insinuated by the argument, a larger proportion of the foreign vote to one side than the other. But how long is that to remain. Are we talking about a thing which is to remain stationary and perpetual, or one which is likely to change. I believe I can recollect when there was a different state of things, and I apprehend that gentlemen will live long enough to see a change, and long before the Constitution we are trying to agree upon will terminate. There will be change after change, and that vote will be first upon one side and then upon the other. The same Constitution is to regulate the rights and privileges of those people no matter which side they are on or how they intend to vote. They must be governed by the same general rules and regulations; we cannot provide for hardships as we go along. I submit we ought to be content to form a solid basis upon which the Legislature can build, by legislation, the provisions which are to govern in regard to the right of suffrage.

Mr. HITCHMAN—Now, Mr. Chairman, there is certainly a very grave error in adopting such a resolution as that proposed by the gentleman from Erie [Mr. Verplanck]. Is he mindful of the fact that in the city of New York and other cities in the State, the houses are numbered, and that when an individual moves from a house his name must still be continued on the list as voting from that particular number from which he was originally registered? Is he aware that this would lead to interminable confusion, and that there can be no end to it? Nothing will more surely bring about such confusion than the adoption of this amendment; and I wonder that a gentleman could be found upon this floor who would advocate such a thing as a registry law for the people of the State of New York. That matter, to my mind, belongs to the Legislature of this State, and not to this Convention. It is clearly in my view

out of all reason to propose any such thing in the fundamental law. Make your laws to punish illegal voters, but let the citizen of the State exercise the right that belongs to him just as freely as he exercises the right of walking the earth, or participating in the affairs of life. I can see no sort of reason why this Convention should for a single moment pass a registry law. It is an odious enactment among a free people, and should be unknown. There should be no such thing found in the fundamental law of any State in this land, nor upon any statute book. Let those who are guilty of fraud and who vote illegally be punished, and for that purpose let statutes be passed, but not for the purpose of interfering with the rights of the citizen in the free discharge of the duties that belong to him. I hope this amendment will be voted down, and that all amendments looking toward the establishment of a registry law in this State will also be stricken out of the instrument which we shall here form.

Mr. VERPLANCK—It being, I think, evident that this Convention are to put into the Constitution some provision for a registry, I would ask the gentleman if it is not best to make it as little onerous as possible?

Mr. HITCHMAN—Inasmuch as I am opposed to all registry laws, and as I have no evidence that this Convention is determined to put such a thing into the Constitution I shall vote against all propositions looking to that end; and least of all, I say, is the amendment of the gentleman [Mr. Verplanck] practicable.

Mr. DEVELIN—It strikes me that the amendment proposed by the gentleman from Erie [Mr. Verplanck] is eminently proper after the adoption of the amendment of the gentleman from New York [Mr. Daly]. This latter amendment provides that there shall be a registration completed six days before each general or municipal election. The amendment proposed by the gentleman from Erie is, that the name of every voter appearing on the poll list shall remain there so long as he resides in the same election district. In the city of New York we have our municipal election one month after the general election. The general election occurs in November. The municipal election takes place on the first Tuesday of December. More than one hundred thousand voters are registered for the general election previously to the first of November. If the amendment of the gentleman from New York [Mr. Daly] shall be maintained, all these voters registered for the November election who desire to vote at the December election, within thirty days afterward, must be re-registered. This necessarily results in a useless and expensive operation; because the changes between the first Tuesday of November and the first Tuesday of December, in the way of change of residence, are and will be very small indeed. I do not know exactly the time at which the municipal elections are held in the other cities of the State, but I believe they take place in April. Then between November and April I presume there are not in the smaller cities many changes of residence before the municipal election occurs. But voters must be re-registered there also, unless this proposed

amendment prevails, if they desire to vote at the next municipal election, which in regard to these cities also involves an unnecessary and expensive operation. The gentleman from Cayuga [Mr. Rathbun] intimates that this proposed amendment is legislative in its character. He admits that a portion of the amendment offered by the gentleman now on my right [Mr. Daly] and adopted, is also a matter of legislation. If, therefore, we have a part of the legislation on this subject, let us complete it in the Constitution, and make it so that we shall not have these unnecessary processes. Now in regard to the operation of registry laws. Every registry law that has been passed has been aimed at a certain portion of the electors of this State. They do not operate equally upon each party. The registry law of 1840 was limited to the city of New York, and was intended to reduce the democratic majority there. The registry law of 1865 included a provision which I mentioned this morning, requiring a naturalized citizen to prove his right to be registered by producing his certificate of naturalization. That provision was aimed at the democratic majority in the city of New York, under the idea that the naturalized citizens there could not produce their certificates of naturalization, and thus would be kept off the registry. This law did not operate equally upon each party, because, according to the admission of the gentleman from Cayuga [Mr. Rathbun], there are more naturalized citizens who belong to the democratic party than to the republican party. No test is asked of the colored man who has never voted. He is not obliged to prove his birth-place or offer any record evidence of his right to be registered; but when you come to the naturalized citizen, he is obliged to produce record evidence that he has a right to vote. All that legislation, I say, has been aimed altogether at the democratic party, and every democrat upon this floor has a right, from the experience of the past, to suspect any legislation that may be had by the now dominant party on the subject of a registry law.

Mr. GOULD—I move that we take a recess until seven o'clock.

The question was put on the motion of Mr. Gould, and it was declared lost.

Mr. NELSON—I move that we now adjourn.

The question was put on the motion of Mr. Nelson, and it was declared lost.

The question then recurred on the amendment of Mr. Verplanck, and it was declared lost.

The PRESIDENT then announced the question to be on the amendment offered by Mr. Champlain, as amended on motion of Mr. Kinney, and as further amended on the motion of Mr. Daly.

Mr. SPENCER—I rise to ask if the amendment offered by me and adopted, would be in order to be moved in the section as it now stands, to except from the operation of the law the class of persons named in the third section.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the adoption of the amendment offered by the gentleman from New York [Mr. Daly] as a substitute for the preceding propositions, and which struck out the amendment offered by the gentleman from Steuben [Mr. Spencer], must be regarded as the determinate opinion of

the Convention, and that a motion to restore an amendment thus stricken out cannot be entertained without a reconsideration of the vote.

Mr. SPENCER—I then move to reconsider the vote by which that amendment was stricken out.

The PRESIDENT *pro tem.*—The motion will lie on the table under the rule.

Mr. ANDREWS—I offer the following amendment:

Add "This section shall not apply to elections for town officers."

I think I am in favor, myself, of striking out these provisions in the section as it stands, making registration applicable to special and municipal elections; but the object of this particular amendment is to call the attention of the Convention to what seems to me to be the position of town electors under the provisions of this section as it now stands. The right to vote for town officers is derived from the first part of this article. They are officers elected by the people, and all the persons qualified to vote, by this article are entitled to vote for them and no others. It is true that the meetings at which such elections are held are called "town meetings," but it is none the less true, as I understand it, that they are elections held under the Constitution and by force of the provisions of the statute made thereunder; and it will be seen that section 4, following the one under consideration, recognizes town meetings, at which town officers are elected, as elections within the meaning of the article. How does it stand under the provision now pending before the Convention? Why, that no person shall be entitled to vote at any general, special, or municipal election, unless he shall be registered according to the terms of this act. It is quite clear, to my mind, that within and under one of these terms is included the election of town officers, which certainly is a special election within the meaning of that term. It is for the purpose of calling the attention of the Convention to this fact, that I have offered this amendment.

Mr. DEVELIN—I rise to a point of order. If the views of the gentleman from Onondaga [Mr. Andrews], are correct, that the amendment adopted covers town elections, then the resolution offered by the gentleman is out of order, because a reconsideration of the previous vote must be had. If the amendment adopted does not include town elections, then his amendment is unnecessary.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the point of order is not well taken—that the amendment offered by the gentleman from New York [Mr. Daly] is susceptible of amendment.

Mr. LAPHAM—It seems to me that the section is not properly subject to the criticism which has been suggested by the gentleman from Onondaga [Mr. Andrews]. It has been held under the statute of this State which provides that no court shall sit on the day of a general election, that that provision does not apply to either charter elections in cities or town meetings. The term "general election," therefore, does not embrace a town meeting. The term "special election," I submit, also does not mean a town meeting, because town meetings are held in pursuance of general laws: nor is a municipal election regarded as a special



election. Still, if it is regarded as important to relieve the section of any doubt, I do not know that I shall object to its remaining as it is.

Mr. GREELEY—I would suggest to the mover to strike out the words "general, special and municipal," and insert the words "in all other than town elections." It will shorten and simplify the clause.

Mr. ANDREWS—I accept the amendment.

The question was then put on the amendment offered by Mr. Andrews, and it was declared carried.

Mr. LAPHAM—I desire to know that those words are not in the section in regard to the person who votes.

The PRESIDENT *pro tem.*—The Chair is not responsible for that.

Mr. ALVORD—I move to strike out that portion of the present amendment which says "as herein prescribed" and say "who shall not have registered according to law."

The question was put on the amendment of Mr. Alvord, and it was declared carried.

Mr. LIVINGSTON—I offer the following amendment. Add thereto, "and no distinction shall be made between persons residing in different parts of the State as to the evidence required to establish their right to be registered."

The PRESIDENT *pro tem.*—The Chair rules that the amendment offered by the gentleman from Kings [Mr. Livingston] is out of order, because the same question has been passed upon before.

Mr. DEVELIN—I move as a further amendment that this section shall not apply to the municipal elections in the city of New York. One reason I have for offering that amendment is that there is no necessity for a registration, because the general election is held on the first of November, and thirty days afterward the municipal election is held, and during those thirty days there are very few removals, and the six days that are provided for by the amendment gives to members of either party the opportunity to ascertain whether any name has been fraudulently put upon the registry. To require a re-registration would make an enormous expense, and one which would be totally without any practical service.

Mr. ALVORD—I hope that the amendment of the gentleman from New York [Mr. Develin] will not prevail, and for this reason: I hope that we have come to that time in the history of this State when all our elections will be had on the same day, and save the people vast expense in the matter of elections. The municipal elections in different parts of the State are not determined by constitutional provisions, but by statute, and next year the State of New York may have a Legislature that will provide that the municipal election shall be held in the middle of the Summer, and again in another portion of the year, so that the circumstances may be widely different from what have been suggested by the gentleman. It will redound very much to the interest of the people of this State to bring down all municipal elections to the same time and place for holding our general elections. If this amendment went in that direction, to compel the people, through the Legislature, to

ask from them that they shall make our municipal elections held at the same time we hold our general elections, I should be inclined to favor it.

Mr. DEVELIN—I desire to make an explanation in regard to the remarks of the gentleman from Onondaga [Mr. Alvord].

The PRESIDENT *pro tem.*—The gentleman is out of order, he having already spoken on the amendment.

Mr. VEEDER—I desire simply to say this, that I think the amendment is improper. For the last two years, to my own knowledge, members of the Legislature have been endeavoring to abolish the distinction in time between the municipal and general elections in the city of New York, and the measure has been successfully opposed by the republican party.

Mr. HUTCHINS—I should willingly vote for the proposition of the gentleman if it was necessary. But it is not necessary. The Legislature may provide that the registry that has been taken in the November election preceding the municipal election may be used at the municipal election. That is the law now; the registry list provided for the November election is taken for the municipal election held on the first of December following, with the addition of such names as may be added thereto subsequent to that time.

Mr. WALES—I move that the Convention take a recess until half-past seven o'clock.

The question was put on the motion of Mr. Wales, and it was declared lost.

The question was then announced on the amendment of Mr. Champlain, as amended.

Mr. VERPLANCK—I was about to say that the subject has become so confused by the numerous amendments that have been made it would take a little while to understand what it is. I do not believe that members can vote with intelligence upon the question now, and I therefore move that we adjourn.

The question was then put on the motion of Mr. Verplanck, and it was declared lost.

The SECRETARY proceeded to read section four as amended, as follows:

"Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established. The Legislature shall provide for a registry of all citizens entitled to the right of suffrage in each election district, to be completed at least six days before any election other than a town election. No person shall vote at any such election who shall not have been registered according to law."

The PRESIDENT *pro tem.*—The Chair will state that if this section, as amended, is adopted, it becomes the section of the Constitution, unless altered by some subsequent action of the Convention.

Mr. DEVELIN—Are there not one or two motions to reconsider before the vote is taken?

The PRESIDENT *pro tem.*—There are motions to reconsider pending, but they cannot be taken up until the time is reached which makes them in order.

Mr. DEVELIN—Can the vote on the pending amendment be taken at all after the motions to reconsider are considered?

The PRESIDENT *pro tem.*—The Chair is of opinion that motions to reconsider can be called up to-morrow, and that, in the mean time, the vote on the pending section can be taken.

Mr. CONGER — I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

The roll was then called on the amendment of Mr. Champlain as amended, and it was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Axtell, Barker, Beadle, Beals, Beckwith, Bell, Bickford, E. A. Brown, W. C. Brown, Case, Clinton, Cooke, T. W. Dwight, Eddy, Endress, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Goodrich, Grant, Graves, Gross, Hadley, Hale, Hammond, Hand, Harris, Houston, Hutchins, Ketcham, Kinney, Krum, Lapham, A. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Miller, Pond, Prindle, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Sheldon, Sherman, Smith, Spencer, Stratton, Van Cott, Wakeman, Wales, Williams—65.

*Noes*—Messrs. Barnard, Bergen, Bowen, E. Brooks, Burrill, Cassidy, Champlain, Chesebro, Cochran, Conger, Develin, Greeley, Hitchman, Kernan, Law, M. H. Lawrence, Livingston, Loew, Lowrey, Magee, Mattice, Monell, Nelson, Paige, Potter, Robertson, Rolfe, Schell, Schumaker, Seymour, Tappen, S. Townsend, Van Campen, Veeder, Verplanck, Weed, Wickham—38.

Mr. CONGER — I move to reconsider the vote just taken.

The PRESIDENT *pro tem.*—The motion will lie on the table under the rule.

The SECRETARY proceeded to read section 5, as follows:

"All elections by the citizens shall be by ballot, except for such town officers as may by law be directed to be otherwise chosen."

Mr. EDDY — I move that the Convention do now adjourn.

The question was put on the motion of Mr. Eddy, and it was declared lost.

Mr. VEEDER — I offer the following amendment to section 5:

"And all laws as to the manner of holding elections, and the election or appointment of inspectors and canvassers of elections and their qualifications, shall be uniform in their requirements."

Mr. LAPHAM — I rise to a point of order. I submit that that amendment is precisely what the Convention has already voted should not be in the Constitution.

The PRESIDENT *pro tem.*—The Chair was in doubt whether it was or not, because language similar was used in an amendment presented to the previous section.

Mr. VEEDER — I desire to make an explanation.

The PRESIDENT *pro tem.* — The Chair rules that the amendment is in order.

Mr. VEEDER — My object in offering this amendment is that I may call the attention of the Convention to the manner in which persons acting as inspectors of election have been elected or appointed in different localities. In my judgment no more important duty can be performed by a

subordinate officer than that performed by an inspector of election. Under the provisions of the Revised Statutes, all inspectors of election originally were elected, and the statute required that the inspector should be a resident and voter of the election district in which he was elected to act. This statute remained in force until the passage of the registry law of 1859. By the provisions of this statute, passed in 1859, the general registry law, a provision was made for the appointment of inspectors and canvassers of election in the city of New York, by the board of supervisors of that city, but the provision of law requiring that the inspectors of election should be residents and voters in the election districts in which they were appointed to act, remained unchanged. Again, in 1860, a subsequent law was passed, in reference to the appointment and duties of inspectors of election, in the city of New York, continuing the power in the board of supervisors to appoint the inspectors, and providing that the inspector should be a voter in the ward containing the election district for which he was appointed, and also that the inspector should be able to read and write. But in 1865 the Legislature saw fit to pass an act by which the appointment of inspectors of elections in the city of New York was taken away entirely from the board of supervisors, and was placed in the hands of the police commissioners of the city of New York. There commenced the first infringement upon the rights of the people; that law abolished the requirement that the inspectors of election should be residents of the election district, or of the ward in which the election district was situated at which he was to act, and permitted the appointment of inspectors who were residents of the assembly district, in which the election district at which he was to act, was situated. The object of the law requiring inspectors of election to be residents of the election districts in which they were elected or appointed to act, undoubtedly was to secure inspectors who were familiar with the residents of the district. The law of 1865 requiring that these inspectors of elections should be simply residents of the assembly district in which they were appointed, abolished this time honored principle. By an act of the Legislature of 1866 the law was again amended, and the police commissioners in the city of New York were authorized to appoint inspectors of elections in that city, regardless of where they resided, so long as they resided in the city and county of New York. The result is this, that to-day an inspector of election may be appointed by the police commissioners to act as an inspector of election in the first ward who resides at Harlem, and in a district where he is perhaps totally unacquainted with the voters. This necessarily leads to confusion. In the city of Brooklyn, however, the inspectors of election are appointed by the supervisors, but the law allows them to appoint any qualified voter in that city to act in any election district. I do not object to the appointment by the boards of supervisors in the several counties. I desire the original provision of law requiring the inspectors appointed to be residents of the election district and voters in the election district in which they serve to be retained. Al-

though the supervisors yet appoint inspectors of elections in the city of Brooklyn an inspector can be appointed who resides in Greenpoint (the extreme eastern part of the city) to conduct an election in the southern part of the city, where probably he does not know a single voter. I believe, Mr. President, that this class of special legislation should cease, and that there should be some provision in the Constitution taking away from the Legislature the power from time to time as in their view or by their caprice they may see fit to interfere with this matter. I submit that the manner of appointment should be uniform, and that the inspectors should be residents and voters of the election district in which they are appointed to act, and if that were done it would obviate the necessity of the personal attendance of electors on the day of registration. This is one reason why, in the country, a personal attendance is not required for registration, because the inspectors are acquainted and familiar with every voter in the district. We are met here with the assertion that the people in the country should be required to attend personally before the board of registry. Why do you pass laws allowing the appointment of incompetent inspectors and persons wholly unacquainted with the voters to act in the city, and then to obviate this defective system, impose upon the people the burden of attending personally before the board of registry and establish their identity to a board with whom they are acquainted, when, if you would confine the appointment of inspectors to persons resident of the election district in which they are to act respectively, you would secure the selection of inspectors who were acquainted with the voters of their districts, and then the personal attendance of the voter could be dispensed with? It is for this reason that I desire uniform laws in reference to the election or appointment of inspectors and canvassers. It will be remembered that when the Metropolitan police board was established, the main argument urged by the advocates of the measure was the necessity of establishing a police board entirely free from politics and political influences. In fact, to secure perfect freedom from all political influences, a provision was incorporated in the law prohibiting the commissioners of police from holding any other office, and from performing any other duties of any office not directly connected with the administration of their duties as police officers. I have failed to hear or discover any good reason why the board of supervisors in the city of New York should not be permitted to appoint the inspectors of election in that city. In the city of Brooklyn they are appointed by the board of supervisors. In the remaining portions of the State they are elected. Where is the necessity for this special legislation — for this innovation upon the rights of localities. I have presented these instances of special legislation in order to show the necessity of some provision in the organic law, requiring uniform legislation upon this subject. I cannot understand the necessity for this class of special legislation, and whatever may have been the object of the Legislature to pass these obnoxious and unjust laws, I am

convinced that the people of the several counties are entitled to protection against the passage of laws which have resulted in no possible good to the communities upon which they have been forced, but have invariably produced great inconvenience, hardship and oppression.

Here the gavel fell, the five minutes having expired.

Mr. S. TOWNSEND—I have an amendment which I offer to apply to the country districts. I propose as a substitute to section five, now under consideration, or section four, which has just been adopted, the following amendment:

Sec. 5. The bounds of all election districts, in districts other than those of incorporated villages and cities, shall be those of the several school districts; and the trustees of said school districts shall constitute the inspectors of registry and election. The bounds of districts and the inspectors of registry and election in incorporated villages and cities, shall be such as the Legislature may direct, provided that no more than two hundred electors, as near as may be, shall reside in any such district. The polls for all other than town elections shall be open on one day from the hour of noon to that of two P. M.

Mr. PRINDLE—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Prindle, and it was declared lost.

Mr. S. TOWNSEND—The adoption of this system would cover some of the difficulties suggested by the gentleman from Kings [Mr. Veeder], who has just taken his seat, arising from the unknown character of the inspectors that are now appointed by the police boards of some of our cities — men ignorant personally of the electors whose voting they supervise and would defeat, from the smallness and neighborhood character of the district, many of the opportunities now afforded for irregular voting, coupled with the limitation of two hours for the voting period, and those the hours of leisure with our rural and laboring population. In almost any of our school-districts, a walk of half a mile to the school-house, and the sacrifice of one hour of leisure time, would enable every elector who desired, to record and deposit his vote. The distance in some of the districts of my county [Queens], from the place of voting to the home of the elector, now exceeds five miles, and requires the greater portion of the day in the exercise of that duty which every good citizen desires to perform. The gentleman from Allegany [Mr. Champlain], the other day, moderately estimated the expenses of a general election at some \$400,000 or \$500,000. My view is that the mere saving of time to the 800,000 electors alone, under this proposition, may be safely and moderately estimated at \$1,000,000, annually — amply sufficient to defray any additional expense that the increase of election districts might involve. These inspectors or trustees of schools, being now selected from our most intelligent citizens, would probably render this service at a very moderate compensation, as election districts would not average over 50 voters each. Even though, in some cases, there may be but one trustee (as some gentlemen now remark), that should present no difficulty, for we would then be assured of a



man of that character who would, in the language of the gentleman from Oneida [Mr. Kernan], a few days since, "shame down" any attempt to force into the ballot-box the vote of any idiot or other improper person. The objection of the gentleman from Broome [Mr. Hand], that it would mix up our school system with politics, is not, in my estimation, a serious one; it would familiarize our youth of both sexes, (and here the gentleman from Richmond [Mr. Curtis], will sympathize with me), with some of the necessary duties that in the lapse of a few years many of them should become familiar with. Indeed, I learn that the services of the gentler sex are now often called into requisition in making up the returns of our present inspectors and registers—to my own knowledge, they often, in our families, assist in preparing the preliminary ballots—and apropos of this view, the very official reports of our debates are not less interesting from the fact that the gentler sex have aided directly in preparing them for the press. The novelty of the provision is not more startling now, than the proposition of the one day's election was 27 years since, when made in the Legislature of this State. Yet the difficulty of most significance is, that all other matters of detail that have occupied so much of our time, partake more of a legislative than an organic nature.

Mr. CASE—How would the gentleman provide for registers in the school-districts where they elect but one trustee?

Mr. S. TOWNSEND—I would be willing that one trustee should act as the inspector in a district of not over twenty votes.

Mr. NELSON—Why not insert in the amendment, that in the case where there is only one trustee, the school-master or the "school-marm" shall act with the inspector? [Laughter.]

Mr. TOWNSEND—That would suit the idea of the gentleman from Richmond [Mr. Curtis].

Mr. HAND—I have got just one single objection to this amendment. There are a great many others. We now elect our trustees on account of their fitness for taking charge of the affairs of education in the respective districts. There should be no politics in the affairs of our schools. I wish to have them disconnected with any political feeling. This amendment would transfer the whole subject of politics into the school-district, and we should elect as trustees, to whom we must commit the great interests of the education of our children, men, who would be thus brought into the political arena. They would be elected without regard to the interests of education, but upon partisan considerations. For this reason, I object to the amendment most decidedly.

The question was then put on the amendment of Mr. S. Townsend and it was declared lost.

The President then announced the question to be on the amendment of Mr. Veeder.

Mr. VEEDER—I call for the ayes and noes.

Mr. HUTCHINS—I consider the amendment offered by the gentleman from Kings [Mr. Veeder] a dangerous one, and one which ought not to be passed. This matter of registry in the city of New York has grown up in consequence of the wants and necessities of that city. The idea that the inspectors and registers of election should be

appointed or elected in the same manner in the city as in the country would imply that the elections are carried on as honestly and in the same manner in the city as in the country. The election of inspectors and registers was continued as long as the men elected could read the English language and write their names, and add up a column of figures; but when that ceased to be the case, the law was changed and the appointment was given to the Board of Supervisors of the city and county of New York. That worked very well for a time, but a very great evil crept into the system growing out of this fact, that when the supervisors made the appointments, and the day of the election came, and the canvassing of votes was commenced, the inspector who had been selected, in consequence of his capacity and integrity would decline to act, and the remaining inspectors would put in another man in his place who would be on hand, prepared to act a willing tool to carry out the wishes of certain parties, so that, as is said in New York, a candidate would be elected after the poll closed on the day of election. To remedy this evil, a law was finally passed giving to the Metropolitan police commissioners the power of appointing inspectors and registers of election, and in case of a vacancy to fill that vacancy; but the inspectors were to be taken from the election districts where they were to serve. It was found, however, impossible in some districts to secure the services of men capable of discharging the duties, for we all know that it requires some ability to fairly and correctly conduct an election, and canvass the votes. The consequence was that in most of the districts in certain portions of the city the election returns had to be sent back by the county canvasser for correction. In order to correct that evil, it became necessary to appoint inspectors of election out of the district in order that they might have men capable of discharging the duties of the office.

Mr. VEEDER—I wish to call the attention of the gentleman to the law of 1860. The law requires vacancies to be filled up by the Board of Supervisors, and not by the remaining inspectors. His idea of inspectors dropping out and others substituted by the remaining members of the board of inspectors is incorrect.

Mr. HUTCHINS—The persons who were appointed canvassers or inspectors to fill vacancies when they occurred were invariably persons named by the remaining inspectors. There was a necessity to have this change made if we were to have honest elections; and the gentleman from Kings [Mr. Veeder], I do not think will claim that we have not had honest elections since the change was made, and that we have not had capable and impartial inspectors, registers and canvassers at our elections. But go back to the old system the gentleman proposes and we shall soon be compelled to make a change.

Mr. K. BROOKS—The gentleman from New York, who has just taken his seat, has not stated all the facts. The board of supervisors is a body created by the Legislature of the State of New York, and it is so constituted that one-half of the members must be of one party, and one-half of the other party. The power was taken from the

Board of Supervisors, and given to the police commissioners, who happened to be about all of the party which is in the majority in the State, and which is represented by the gentleman from New York [Mr. Hutchins].

Mr. HUTCHINS — Will the gentleman allow me to ask him a question? Does he claim the Board of Supervisors are equally divided between the two great parties?

Mr. E. BROOKS — Yes, sir; that is the law and as I understand it, that is the fact; both parties are represented in the Board of Supervisors and the power was taken from them over inspectors of election and given to the police commissioners, which is a partisan commission.

The question was then put on the amendment of Mr. Veeder, and it was declared lost by the following vote:

*Ayes* — Messrs. Barnard, Bergen, Bickford, E. Brooks, Burrill, Cassidy, Chesebro, Clinton, Cochran, Couger, Daly, Fowler, Hitchman, Law, Livingston, Loew, Lowrey, Mattice, Monell, Paige, Robertson, Rolfe, Schell, Seymour, Tappen, S. Townsend, Veeder, Verplanck, Wickham—29.

*Noes* — Messrs. A. F. Allen, O. L. Allen, Alvord, Andrews, Axtell, Barker, Beadle, Beals, Beckwith, Bell, Bowen, E. A. Brown, W. O. Brown, Case, Clark, Cooke, T. W. Dwight, Eddy, Endress, Farnum, Ferry, Flagler, Folger, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Magee, McDonald, Merrill, Miller, Nelson, Potter, Prosser, Rathbun, Reynolds, Root, Rumsey, Schoonmaker, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—67.

Mr. VEEDER—I move a reconsideration of the vote which has just been taken.

The motion was laid over.

Mr. VAN CAMPEN—I offer the following amendment to section five:

"All elections and all officers elected by the electors of this State shall be by ballot; and all questions submitted to the electors for their assent, approval or decision shall be by ballot."

My object in moving this amendment is, that in all cases where an expression of the public will is desired it shall be taken by ballot. There have been a few officers appointed at town meetings where this rule has not applied, such as overseers of the highways, and the manner in which that has been done is never such as to take the public sense in regard to the matter at all. I understand there was a law passed a year ago last winter giving that appointment to the commissioner of highways, but that I am told, has been repealed. I desire that in the future such elections shall be by ballot. In regard to the latter clause, providing that on all questions submitted to the people for their approval, the decision shall always be taken by ballot—as it is very well known to gentlemen that in towns, where additional sums of money are required to be raised for certain purposes, that the vote taken is taken in such a way as not to represent with any certainty the popular will. The question is generally submitted to a crowd in

front of the place where an election is held, and no determination can be had in that way by which we can arrive definitely at what the electors desire in regard to that matter. Now, when questions of that character are to be taken, according to the law as it now is, notice should be given that a certain amount was to be raised for a certain purpose, and it should provide that ballots should be furnished showing what sum of money is desired to be raised so that the electors can vote for or against it, and in that way we could get at a definite expression of the popular will with regard to such matters.

Mr. VERPLANCK—I had hoped there were some things which would not be mixed up in politics. We have in the country various officers in road districts which have generally been held by persons without regard to politics, and the proposition of the gentleman from Cattaraugus [Mr. Van Campen] proposes that all such officers should be elected by ballot. It would be perfectly impossible to have such election on account of the number of road districts, and it would lead to endless confusion.

Mr. BERGEN—I hope this amendment will not prevail. It has been the custom in that part of the country in which I reside, at town meetings to elect road masters and pound masters by a vote, but not by a ballot, and I presume that is the custom in other parts of the State. I know it is the rule in the county of Kings, and there never has any difficulty occurred in relation to electing that class of officers by that method. These offices are not desired, but as a general thing they are taken by persons as a matter of convenience to the neighbors and for the public benefit, without being desired by individuals. If you adopt this amendment you throw these offices into the political arena, and we have never placed them on political grounds. Other officers who are now elected by ballot are elected on political grounds. I think it is wise to continue the practice which has been in vogue so long at least with us. If it is left alone it will operate well; if this amendment is adopted it will have an injurious effect. Then there are other questions which arise at town meetings which it would be difficult to settle by ballot, for instance, the raising of money, to repair highways. As the law now stands, by the recommendation of the commissioners of highways a town meeting has the right to vote and appropriate a small sum (the sum of seventy-five dollars in the county of Kings, in other counties it may be different) on a motion, without a vote by ballot. The gentleman's amendment would take away from the town that right, for a ballot could not be prepared in time for that purpose, no printed notice having been required, though previous notices are required for larger sums. There are also other matters which are taken by a *viva voce* vote at town meetings which this amendment would interfere with, and for these reasons I hope the amendment will not prevail.

The question was then put on the amendment of Mr. Van Campen, and it was declared lost.

Mr. BARKER—I offer the following amendment:

Amend the section by striking out the words "by the citizens" in line 1.

I offer this because it is, I think, a better expression, and more certain in its meaning.

Mr. CONGER — I would suggest to the gentleman he might also strike out or leave out the phrase introduced, so that it will read, "all elections shall be by ballot."

Mr. VERPLANCK — I hope this amendment will not prevail. These are words which have been in all the Constitutions of this State, and I want to keep, if I can, two or three of the old words. The object of this is to require that all elections shall be by ballot. When persons are elected to office by the Legislature, it is done *viva voce*, and I think it is a very proper way, and I hope these words will not be stricken out.

Mr. ROBERTSON — I move to further amend by striking out the word "citizens," and insert the word "people."

The question was put on the amendment of Mr. Robertson, and it was declared lost.

The question then recurred upon the amendment of Mr. Barker, and it was declared lost.

Mr. HARRIS — I move to strike out the words "by electors," so that it will read "all elections shall be by ballot."

The PRESIDENT *pro tem.* — That motion is not now in order, having just been voted down.

Mr. FERRY — I move to amend the section by inserting after the word "officers" in line 2 the words "or objects." My reason is this: that in the section as it reads, "all elections must be by ballot." In voting for officers we all know that there are many objects for which we vote at town meetings which do not involve elections of town officers. It is said that voting for those objects are not elections, but I understand the amendment provides for all cases at these elections, and we also often vote for objects such as bounties, etc., and similar objects, for which we are in the habit of voting *viva voce*, or by ballot, as we see fit. Certainly, if this construction shall be put upon the language, it is very desirable that the word "objects" should be inserted, so we shall be at liberty to take that action.

The question was put on the amendment of Mr. Ferry, and it was declared lost.

Mr. TAPPEN — As the section is now, amendments—

The PRESIDENT *pro tem.*—The Chair is not informed that any amendments have been adopted.

Mr. TAPPEN — I withdraw my remarks upon that subject then.

The question was then put upon section 5, and it was declared adopted.

Mr. CASE — I move the Convention do now adjourn.

The question was put on the motion of Mr. Case, and it was declared lost.

The SECRETARY then proceeded to read the sixth section, as follows:

SEC. 6. No person who is not, at the time of taking the oath of office, an elector, shall hold any office under this Constitution. All officers shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will sup-

port the Constitution of the United States, and the Constitution of the State of New York; and that I will faithfully discharge the duties of (the office he is to hold) according to the best of my ability."

Mr. ALVORD—I do not think there is any real necessity for this sixth section down to the words "all officers" in the third line, but some persons may not agree with me, and in order to make it, as it seems to me it properly should be, it should read that "no person who is not at the time of taking the oath of office, a citizen of the State, and except as to length of residence, an elector, shall hold any office under the Constitution." You can see very well that in very many instances, a gentleman who has had a long residence in the State under this requirement may not be a resident in the county for four months, and therefore, he is not an elector and cannot by this section hold any county office. A man may be a resident of the city or State of New York for a year and may be under the necessity of being absent in one of the neighboring sister States, and remain absent two or three months, absolutely having changed his residence, and if he comes into the State just before election, say two or three or four months, he is, under this provision, ineligible to any office in the gift of the State until he shall become entirely an elector by having lived in the State a year continuously, and within the county four months. It is for this reason, it seems to me, the language of the section is entirely unnecessary. I have no objection to altering the amendment so as to read, "No person who is not at the time of taking the oath of office a citizen of this State shall hold any office."

Mr. BARNARD — It appears to me that the subject of qualification for office, and the oath of office does not belong in this section, and I, therefore, move to strike out the whole section. In the Constitution, under which we now live, the oath of office is a separate article, and I believe the committees who have before them the subject of State officers will provide an oath, and I think it does not belong to the suffrage part of the Constitution at all.

Mr. MERRILL — I wish to explain that the committee placed this section in the article, supposing it to be their duty from the title which was given to the committee: "The Committee on the Right of Suffrage and the Qualifications to Hold Office."

The question was then put on the motion of Mr. Barnard, and it was declared lost.

Mr. HALE — I move to amend by striking out the first and second lines of this section. There never has been any provision of this kind, and I am not aware that we have ever suffered any inconvenience from the absence of electors so far as regards any county office.

Mr. ALVORD—I will accept that.

Mr. GREELEY—I would beg the Convention to consider this very fully. Here are gentlemen moving into the State and moving out, and I think gentlemen can afford to wait long enough to become voters before they become candidates. I have known uneasy persons to move into a new locality simply to get office. I think this is a reasonable



proposition. The committee could not help stating some qualification for office, for the order of the Convention required it; and I think this is a very mild requirement of the qualifications for holding office in this State; and I hope it will be adopted.

The question was put on the amendment of Mr. Hale, and it was declared to be lost.

Mr. LIVINGSTON—I desire to offer the following amendment, and upon it I wish to call for the ayes and noes.

Amend the section by inserting after the word "election" in line two, the words "and a white man."

Mr. HAND—I would inquire of the gentleman what particular shade of white is required and whether he would appoint the inspectors to ascertain that.

Not a sufficient number seconding the call the ayes and noes were not ordered.

Mr. WAKEMAN—I am opposed to the proposition of the gentleman from Kings, for as the proposition reads I do not understand that there is any tribunal for determining who is qualified to hold office. I suppose if a man is elected to fill any office his certificate of election would be sufficient to entitle him to hold office and no person can question it. If this amendment prevails, and if a person elected presents himself with his credentials, the incumbent in office can refuse to give up the office or books and papers pertaining to it, taking the ground that the person who claims to be elected is not qualified and there is no tribunal designated to settle that question.

Mr. SEYMOUR—I move to strike out the words "an elector" and insert "citizens of this State." The reason for that is, that there are persons who may be citizens of the State but who have a temporary absence. They may not be entitled to vote, and this may be so construed as to prevent such a person who should be a citizen of the State from holding office. I think there should be no objections of that kind.

Mr. ALVORD—I do really hope gentlemen of the Convention will understand this, and when they do understand it they will vote accordingly upon this proposition. I have had very serious doubts in my mind whether the Chair understood the original proposition when it was made and voted upon by the Convention. I will again reiterate in a few words exactly what the effect of this section must necessarily be. A person who lives in the county of Rensselaer, for instance, eight months in the year, and happens accidentally to be required to go out of the county for two months, and then comes back just previous to election, he is, under this provision, ineligible to hold any county office or other office in the State. A man may spend his entire lifetime in the State and then go out within one year previous to the election, and when he comes back again he is ineligible to office until he shall have been in the State for a year. I trust that no such motion as that will prevail at the hands of this Convention.

Mr. KERNAN—I desire to call the attention of the gentleman to one thing. A man may be qualified to be elected, but if not an elector cannot take the oath of office.

Mr. ALVORD—I understand that. That is in addition to what I have said. Therefore the amendment of the gentleman from Rensselaer [Mr. Chesebro], which provides that the person shall be a citizen of the United States, and of the State, seems to me all that should be required.

Mr. BURRILL—I would merely like to ask the gentleman from Onondaga what is the definition of a citizen of the State. There is nothing in the Constitution which prescribes what constitutes a citizen of the State.

Mr. ALVORD—A citizen of the State is a person who is entitled, after he shall have gone through certain pre-requisites to become an elector; and he is a citizen of the State by virtue of our laws the moment he comes within our State, having the same privileges, powers, and duties as all citizens, except the same right of voting.

Mr. CLINTON—One objection to this amendment is that if it be adopted, you may under its provisions elect minors.

Mr. PRINDLE—I would like to ask the gentleman from Rensselaer [Mr. Seymour] whether he intends to include females?

Mr. SEYMOUR—No, sir, I do not intend to include females, and I do not suppose that the amendment as it stands now, will include them.

The PRESIDENT *pro tem.* announced the question to be upon the amendment of the gentleman from Rensselaer [Mr. Seymour].

Mr. COCHRAN—I rise to a point of order. Is not the question upon the motion of the gentleman from Kings [Mr. Livingston]?

The PRESIDENT *pro tem.*—Not in the first instance. In the first instance the question is upon the motion of the gentleman from Rensselaer [Mr. Seymour].

Mr. ALVORD—May I ask the gentleman from Rensselaer to hear read the original proposition made by me, to see if he will not accept it as his amendment? It is as follows: "That no person who is not at the time of taking the oath of office a citizen of the State, and except as to length of residence, an elector, shall hold any office under the Constitution."

Mr. SEYMOUR—I will accept that.

Mr. CHESEBRO—I rise to a point of order, that the proposition as now modified has been already voted down.

The PRESIDENT *pro tem.*—The Chair is not informed that such is the case. The proposition of the gentleman from Essex [Mr. Hale] was voted down.

Mr. CHESEBRO—I understood that was accepted by the gentleman from Onondaga [Mr. Alvord] and became his proposition.

The PRESIDENT *pro tem.*—The gentleman from Onondaga [Mr. Alvord] moved as he has just stated in his place, and the gentleman from Essex [Mr. Hale] made a suggestion which the gentleman from Onondaga adopted, and that amendment was voted down. Then the gentleman from Kings [Mr. Livingston] made an amendment, and next the gentleman from Rensselaer [Mr. Seymour] made an amendment. The gentleman from Onondaga now suggested to the gentleman from Rensselaer [Mr. Seymour] that he should accept as his amendment the proposition which he first made, and which he subse-

quently allowed to be displaced on the suggestion of the gentleman from Essex [Mr. Hale], and the Chair now understands the gentleman from Rensselaer to accept that as his amendment.

Mr. SEYMOUR — I do accept it.

The question was put upon the amendment of Mr. Seymour, and it was declared carried, on a division, by a vote of 48 to 37.

Mr. CHESEBRO — I desire to move a reconsideration of the vote by which the amendment of the gentleman from Rensselaer has been carried.

The motion was laid on the table under the rule.

Mr. HALE — I move a reconsideration of the vote by which the amendment offered by myself was lost.

The motion was laid on the table under the rule.

The question was then put on the amendment of Mr. Livingston, and it was declared lost.

Mr. BICKFORD offered the following amendment:

"By inserting after the word 'officers' in the third line, the words 'except such town and village officers as the Legislature shall not require to take the oath of office.'"

As the section now stands every pathmaster will have to take the oath of office, and every village trustee, and street commissioner, which I think is entirely unnecessary and contrary to the usual practice, and therefore, I think the amendment ought to prevail.

Mr. SPENCER — I offer the following substitute for the amendment of the gentleman from Jefferson [Mr. Bickford.] In drawing that amendment I would say, I have copied the language from the Constitution of 1846. Insert after the word "officers," in line 3, "except such inferior officers as may by law be exempted."

Mr. BICKFORD — I will accept that amendment.

Mr. BERGEN — I hope that amendment will be adopted. There are a large number of inferior officers in this State who are not required to take the constitutional oath of office, and I see no good reason why they should be required. For instance, the trustees of schools, and the clerks of common schools, and commissioners of highways and pound-masters. These offices in our locality, at least, have generally gone begging, and persons are induced to take them by persuasion for the benefit of the neighborhood. There may be other localities where these offices are sought for, but in our portion of the county of Kings these officers have never been required to take the oath. That has been the practice for years past, and no difficulty has occurred in consequence of their not taking this oath. Under the present Constitution they are not required to take the oath. There has been no necessity for it, and no complaint that I have ever heard of, and I hope the amendment will be adopted.

Mr. MERRILL — I do not see what harm can result from requiring all officers, high and low, to take this oath. Instead of being injurious, it seems to me it would be a healthy operation.

The question was then put on the amendment and was declared carried. A division was called for.

Mr. BARNARD — I rise to a question of order. I ask whether this proposed amendment is not in

conflict with the Constitution of the United States.

The PRESIDENT *pro tem.* — The Chair is unable to decide the question on the spur of the moment.

Mr. BARNARD — I will read the section. Article 6, of the Constitution of the United States, says:

"The Senators and Representative and the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution."

Mr. HAND — Under which head does a school trustee belong — executive or judicial?

Mr. BARNARD — Every officer of government who takes the oath to support the Constitution of the United States, is I suppose, if not judicial, or legislative an executive officer, and is sworn in conformity with that Constitution.

Mr. BICKFORD — I would merely say that this class of officers, such as path-masters, overseers of the poor and pound-masters are not classed either as legislative, judicial or executive officers. They are mere administrative officers.

The question was again put on the amendment of Mr. Bickford, and it was declared carried, on a division, by a vote of 42 to 32.

Mr. CASSIDY — I move as a substitute to the several articles which have been presented, the section in the existing Constitution. I move to substitute for section 6, as reported by the committee, article 12 as it now stands in the Constitution, which is in these words:

"Members of the legislature and all officers, executive and judicial, except such inferior officers as may be by law exempted, shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of New York; and that I will faithfully discharge the duties of the office of \_\_\_\_\_ according to the best of my ability."

"And no other oath, declaration or test shall be required as a qualification for any office or public trust."

That article has stood for a great many years, and has been approved always; and I believe there was no discussion in reference to it and no intention on the part of the Committee of Suffrage to alter it.

The PRESIDENT *pro tem.* — Does the gentleman [Mr. Cassidy], move it as a substitute for the whole section, or for so much of the section as follows line three?

Mr. CASSIDY — For the whole section.

Mr. GREELEY — The Committee on Official Corruption is expected to act very decidedly and very promptly and to propose some stringent oath of office, with reference to corruption. The last section of the gentleman's amendment will cut off all such oaths. I do not wish to forestall that question, and, therefore, I wish he would withdraw the last clause. If he does not I trust the Convention will vote it down; for I wish the Convention to be left free, if they shall choose hereafter, to apply

some test in regard to corruption in office. For instance, a man has corruptly bought his office—has corruptly promised to do this or that thing if he gets the office. That I do not wish to be precluded from dealing with by our action on this question; and, therefore, if that is insisted upon, I shall vote against his proposition to amend.

Mr. KERNAN — If the section proposed by the gentleman from Albany [Mr. Cassidy] is substituted for the one under consideration, there will be no difficulty then, if members of the Convention desire it, to amend the oath as suggested by the gentleman from Westchester [Mr. Greeley], and thus embrace what he desires in reference to corruption.

Mr. LAPHAM — I am opposed to this amendment. The Constitution of 1846 embraces the latter clause in the oath, and was adopted at a time when the events which have since transpired, were not anticipated by any one. It had not entered into the imagination of any man to conceive that such a wicked attempt to destroy this government, would have been made as has since actually occurred and I am opposed to re-enacting an oath of office which will forbid us in any form whatever from adopting the necessary tests to apply the present exigencies of the time to all classes of officers wherever it shall be deemed necessary. I am opposed to it for another reason. The gentleman from Onondaga [Mr. Comstock], not long since, during this very debate, in effect proposed the same thing, that no test oath of any description should hereafter be adopted, and it has been voted down. This is a proposition to re-enact in substance what he proposed to have enacted, and which the Convention rejected.

Mr. BERGEN — I would like to have the amendment read.

The PRESIDENT *pro tem.* — The amendment is not in possession of either the Chair or the Secretary. It is proposed to strike out the whole section and substitute section 12 of the present Constitution for it.

Mr. CONGER — I call for the ayes and noes.

Mr. PAIGE — I intended to offer an amendment requiring from the successful candidate elected to any office, an oath, and my design had been to offer it as a separate section — as section number 7, but the proposition of the gentleman from Albany [Mr. Cassidy], would cut it out, and I therefore propose to offer an amendment to section 6, and the Convention may, at its option, approve of it there, or have it adopted as a separate section.

The SECRETARY proceeded to read the amendment of Mr. Paige, as follows:

"SEC. 7. Every person elected at any election to fill an elective office, before he takes the oath of office prescribed in the next preceding section of this article and enters upon the duties of such office, shall take and subscribe an oath that he has not directly or indirectly paid or advanced any money or property to influence or as a compensation or reward for a vote given, or the withholding of a vote at such election, or for any other purpose, to promote his election to such office, except for defraying the expenses of printing and circulation of votes, handbills and other papers previous to such election, or promised, agreed or offered to

do so, and that on his refusal or omission to take such oath, his election to such office shall be void; and if such person so elected to such office shall have paid or advanced any money or property for defraying the expenses aforesaid, he shall further state in such oath, the several sums of money and the respective values of the property so paid or advanced, the respective specific objects for which such payments or advances were respectively made and the names of the persons respectively to whom they were made; and in case such person shall be convicted of directly or indirectly advancing or paying after he shall have entered upon the duties of such office, or after he shall have taken such oath of office, any money or property as a repayment to any person or persons, or indemnification for advancing or paying money or property for any of the purposes above mentioned, except for defraying the expenses of printing and circulation of votes, handbills and other papers previous to such election, or of promising, agreeing or offering to do so; such person so elected to such office, and convicted as aforesaid, shall forfeit such office or the right to hold the same; and the Legislature shall pass all laws necessary to carry the provisions of this section into effect."

Mr. PAIGE — Upon reflection I withdraw it now, and will offer it as an additional section.

Mr. AXTELL — I offer an amendment to the section as it now stands. After the word "ability" in the tenth line, section six, add the following:

"I do further solemnly swear or affirm that I have not either directly or indirectly paid or contributed, or promised to pay or contribute, any money or other valuable thing for the purpose of being used, or which has been used directly or indirectly as a reward or compensation to any voter or other person to secure my election, or in procuring my nomination to this office."

The question was then put on the amendment of Mr. Axtell, and it was declared lost.

A count was called for.

Mr. AXTELL — I withdraw the amendment.

Mr. BELL — I would like to inquire of the gentleman from Albany [Mr. Cassidy] whether he retains the latter clause, "and no oath, declaration or test shall be required."

Mr. CASSIDY — Yes, sir.

Mr. BELL — Then I shall vote against it.

Mr. ALVORD — I move to amend by striking out the words, "and no other oath, declaration or test shall be required."

The question was then put on the amendment of Mr. Alvord, and it was declared carried.

The question was then put on the amendment of Mr. Cassidy as amended.

A sufficient number having seconded the call for the ayes and noes they were ordered, and the amendment was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Baker, Barnard, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Carpenter, Case, Champlain, Cheritree, Chesebro, Clark, Clinton, Cochran, Cooke, Daly, T. W. Dwight, Eddy, Endress, Farnum, Ferry, Flagler, Folger, Fuller, Gerry, Goodrich, Gould, Grant, Graves, Greeley, Hadley, Hale,



Hammond, Hand, Hitchcock, Houston, Hutchins, Kernan, Ketcham, Kinney, Krum, Lapham, Law, A. Lawrence, M. H. Lawrence, Leo, Ludington, Mattice, McDonald, Miller, Monell, Nelson, Paige, Potter, Prindle, Reynolds, Rogers, Rolfe, Root, Rumsey, Schell, Schoonmaker, Seymour, Sheldon, Sherman, Smith, Spencer, Stratton, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Verplanck, Wakeman, Wales, Wickham, Williams—88.

Noes—Conger, Develin, Hitchman, Merrill, Robertson, L. W. Russell—6.

Mr. CONGER—I move a reconsideration of the vote by which the latter clause of the section of the Constitution, as proposed by the gentleman from Albany [Mr. Cassidy], was stricken out.

The PRESIDENT *pro tem.*—The motion will lie on the table under the rule.

The question was then put on the section, as amended, and it was declared adopted.

Mr. MILLER—I move a reconsideration of the vote by which the words "or make any promise to influence" were inserted in the sixth line of the second section.

Mr. BELL—I move that the Convention do now adjourn.

Mr. LAPHAM—I wish to move a reconsideration of the vote by which the present order of business was made the special order of business after the reading of the Journal.

The motion was ordered to lie on the table under the rule.

The question was then put on the motion of Mr. Bell to adjourn, and it was declared lost.

Mr. PAIGE—I offer the amendment, which was read a few minutes since, as section 7 of this article. I wish to make a single remark. Gentlemen have expressed a desire to provide a remedy against bribery and corruption at elections. In my judgment there are two effective remedies: one is the challenge at the polls of the voter, and the other is requiring an oath from the successful candidate, and the amendment I have proposed provides the remedy of the oath of the successful candidate.

Mr. BOWEN—I offer the following as a substitute for the amendment proposed by the gentleman from Schenectady [Mr. Paige]:

"And that I have not given or promised to give any money or other valuable thing for any vote or the withholding of any vote at the election at which I was chosen."

Mr. E. BROOKS—I renew the motion to adjourn, but will withdraw it in order that the President may lay any motion he wishes before the Convention.

The PRESIDENT *pro tem.* announced the reception of a communication from the Governor, dated July 29th, 1867, in response to a resolution of the Convention, dated June 27th, 1867, calling for information in respect to the subject of pardons granted by the Governor.

Which was referred to the Committee on the Pardoning Power, and ordered to be printed.

Also, a communication from Luther Caldwell, Clerk of the House of Assembly, in response to a resolution of the Convention, calling for the titles of bills in regard to corporations, municipal and otherwise.

Which was ordered to be printed.

Also, a communication from Richard B. Conolly, Comptroller of the city of New York, in response to a communication of the Convention asking for information in reference to contributions made to religious institutions of the city of New York.

Mr. DEVELIN—What will be the reference of that communication?

The PRESIDENT *pro tem.*—The Chair knows of no other committee except the Committee on Cities.

Mr. DEVELIN—I move that it be referred to the Committee on the Powers and Duties of the Legislature.

The PRESIDENT *pro tem.*—It will take that reference if there be no objection.

The PRESIDENT *pro tem.* also announced the reception of a communication from Hon. Thomas Hillhouse, Comptroller, in response to a resolution of the 28th of June, calling for information in respect to donations made by the State to charitable and religious institutions.

Which was ordered to be printed.

Mr. RUMSKY—I move that the article we have adopted, as it now stands, be printed for the use of the Convention in the morning.

The question was put on the motion of Mr. Rumsey, and it was declared carried.

Mr. BICKFORD—I move to amend by including also the amendment offered by the gentleman from Schenectady [Mr. Paige].

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. VERPLANCK—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Verplanck, and it was declared carried.

So the Convention stood adjourned.

WEDNESDAY, July 31, 1867.

The Convention met at 11 o'clock A. M.

The PRESIDENT *pro tem.* [Mr. FOLGER] is the Chair.

Prayer was offered by the Rev. HENRY DARLING.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GRAVES—I ask leave of the Convention to present a resolution.

The PRESIDENT *pro tem.*—That can only be done by unanimous consent. There being no objection the resolution will be entertained.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the use of this Hall be granted to the Rev. Dr. Fisher, of Utica, and others, on the evening of the 8th of August next, to allow them the opportunity of addressing the Committee on the Adulteration or Sale of Intoxicating Liquors.

The question was put on the resolution of Mr. Graves, and it was declared adopted.

Mr. LAPHAM—I ask the unanimous consent of the Convention to introduce the following resolution:

The SECRETARY proceeded to read the resolution:

*Resolved*, That the Committee on Canals be, and

they are hereby authorized to send for persons and papers, and to inquire into the cost of building enlarged locks out of the present structures, with the capacity of the present locks to do the business of the canals, and of the present prism or channel of the canals to do the business with such enlarged locks.

Mr. CONGER—I object.

The PRESIDENT *pro tem.*—Objection being made, the resolution cannot be entertained.

Mr. HAND—Some gentleman introduced yesterday a motion that we change the order of business and not make the report of the Committee on the Right of Suffrage the first business, so that we may call up resolutions and other business. I move, therefore, to call that motion from the table.

The PRESIDENT *pro tem.*—The motion yesterday was to reconsider the vote by which the report of the standing committee was made the special order. On the 24th day of July the convention adopted the following rule:

*Resolved*, That the report of the standing Committee on the Right of Suffrage and the Qualifications to Hold Office, and the report of the Committee of the Whole upon the report of the said standing committee, if undetermined at this sitting, shall be the special order for to-morrow morning immediately after the approval of the Journal, and for every succeeding morning at the same time, until the report of the said standing committee is disposed of in the Convention.

Mr. HAND—I call for the consideration of this motion, because a good many days have elapsed, and much time has been spent in discussion.

The PRESIDENT *pro tem.*—Yesterday Mr. Lapham moved to reconsider the vote by which that resolution was adopted.

Mr. HUTCHINS—I hope that resolution will not be reconsidered. I notice that the gentleman who offered the resolution yesterday has not moved it. I understand that he did not mean to press it this morning while we were in this order of business. I, therefore, move to lay this resolution on the table.

The question was put on the motion of Mr. Hutchins, and it was declared carried.

Mr. CONGER—I desire to withdraw the objection I introduced to the resolution of Mr. Lapham.

The question was then put on the resolution of Mr. Lapham, and it was declared adopted.

Mr. PAIGE—I would like to inquire if the amendment offered by Mr. Bowen was offered as a substitute for the one offered by me.

The PRESIDENT *pro tem.*—The Chair so understands.

Mr. PAIGE—That proposition seems to me to be defective, at least in one respect. It does not require an oath or statement of the candidate that he has not advanced money or paid money to any person to promote his election, except for the purpose of defraying those legal expenses that are allowed by the Revised Statutes. An oath of that character would be entirely ineffective to remedy the evil of corruption or bribery at the election. A candidate may contribute money under the color of paying legal expenses; that money being deposited in the hands of other persons may be used for the illegitimate purpose of

purchasing votes. The proposition that I had the honor to present, for which this is a substitute provides, in the first place, that the candidate must take an oath that he has not paid or advanced any money for the purpose of influencing, or as a compensation or reward for a vote to be given, or the withholding of a vote at the election, or for the purpose of promoting his election, and on the omission to take such oath, the result shall be that his election shall be void. Then, sir, to guard against the evasion, by allowing him to advance money to pay expenses for printing, and the circulation of tickets, and distributing papers and hand-bills, it requires that he shall state specifically the sums of money paid, the objects for which they were paid, and the persons to whom paid. The latter part of the proposition applies to a case where the candidate after he has been elected pays money to other persons, who have paid or advanced money for the purposes mentioned in the first part of the section; and in case he should be convicted of so doing, that he should also be disqualified from holding his office. These two provisions of this amendment may be divided into two sections, and that relating to the oath may stand by itself. Now in many districts in this State, candidates are nominated with special reference to their property, and to their willingness to contribute money to promote their election, and it has occurred to me there are but two effective remedies to purify the exercise of the elective franchise. One is the principle already adopted to make the sale or the purchase of a vote the ground of challenge at the election and to put the voter upon his oath, to vindicate himself; the other is to put the candidate who is elected to office on his oath that he has not used money either to purchase votes nor to promote his election, except for the specific purposes which are named in this oath. I find, sir, that there is no provision of law declaring that a candidate is disqualified to hold an office which he obtains by bribery or corruption. There is no law punishing him for being guilty of that offense. The statute in relation to bribery seems to be confined exclusively to bribery and corruption committed by the officer after he has taken possession of the office, and, therefore, if the first section requiring this oath is adopted, it must be followed by another declaring him disqualified to hold an office who commits bribery in obtaining his election. These two propositions must go together, and if the first is adopted the second must follow as a necessary result. This simple amendment would be entirely in my judgment ineffective. A candidate may very well and easily contribute large sums of money under the color of legal expenses, and still himself not be a personal participator in its corrupt use in the election. It will, therefore, be a dead letter on the statute book and will not have the least influence whatever in preventing corruption at the polls, or securing a person's election by an illegitimate and corrupt use of money.

Mr. BUKRILL—There are two propositions now before the Convention. I have no objection

myself to any clause which may embody the principle contended for by the gentleman from Niagara [Mr. Bowen], and also the principle embraced in the proposition of the gentleman from Schenectady [Mr. Paige]. The only objection I have to the proposition of either of these gentlemen is the form in which they have been presented. I think the proposition of the gentleman from Schenectady [Mr. Paige], is too long to be incorporated in the fundamental law of the State. I would be very glad to have an opportunity of offering an amendment to carry out the propositions, both of the gentleman from Niagara [Mr. Bowen], and the gentleman from Schenectady [Mr. Paige]. We have already, in the second section of this proposed article, provisions covering every case, and conferring upon the Legislature the power of enacting laws to punish, by excluding from suffrage, all persons convicted of bribery and other crimes. I think we might gain our object by inserting at the end of the sixth section an amendment, as follows:

"And that I have not knowingly or intentionally violated the second section of this article, or any law passed in pursuance thereof."

And if the gentleman from Schenectady [Mr. Paige], also desires to have a disqualifying clause he might add to that "any person who shall refuse to take the oath herein prescribed, or who shall be convicted of having sworn falsely on taking such oath, shall forfeit his office." I think in that, you embody the principle contended for here by both of these gentlemen, and in a manner much more proper to be inserted in the fundamental law of the State.

The question was put on the amendment of Mr. Bowen, and it was declared lost.

Mr. BURRILL—I now offer my amendment as a substitute to the proposition of the gentleman from Schenectady [Mr. Paige].

The SECRETARY proceeded to read the amendment as follows:

Add at the end of section 6, the following:

"And that I have not knowingly or intentionally violated the second section of this article, or any law passed in pursuance thereof. Any person who shall refuse to take the oath herein prescribed, or shall be convicted of having sworn falsely on taking such oath, shall forfeit his office."

The question was put on the amendment of Mr. Burrill and it was declared adopted.

The question then recurred on the amendment of Mr. Paige as amended, and it was declared carried.

Mr. E. BROOKS — In the belief, Mr. President, that this Convention has occupied as much time as can be afforded in the general allotment of time for the consideration of other questions, I move now the following resolution which I ask leave to read in my place:

*Resolved*, That the report now under consideration with all the provisions lying upon the table, relating to the same, be committed to the select committee appointed on the 27th day of July, with instructions to report to the Convention in principle and substance, article 2, sec. 1, of the Constitution of 1846, with the following amendments:

*No property qualification for the right of suf-*

*frage, or for eligibility to office, shall ever be required.*

No person authorized to vote under the existing Constitution, shall be disfranchised, nor shall the right of suffrage be abridged or extended. *Provided*, however, that laws shall be passed by the first Legislature assembled after the adoption of this Constitution, excluding from the right to vote all persons who may pay or receive money or any other thing of value, or promise any consideration, place or office with the view of securing or preventing the election of any candidate for any federal, State or local office, or who may be engaged in buying or selling votes, or in any way preventing the purity of the ballot, or the freedom of elections.

My object, Mr. President, in offering this resolution is, as stated in its terms, to commit this report to the select committee of five gentlemen appointed on Friday last, in order that it may perfect the phraseology of the several provisions which have been considered in regard to the amendments that we have made, and in the belief that unless some such provision or amendment is adopted we shall occupy a great deal more time before we come to any conclusion upon the subject under consideration.

Mr. GOULD — I move to strike out the instructions to the committee.

The PRESIDENT *pro tem.* — The Chair is of opinion that is all that gives it the right to be heard. That amendment is not in order. The Convention has gone through with the article in their amendments, and so far perfected it.

Mr. SHERMAN — I move a division of the question, so far as it is susceptible of a division.

Mr. SMITH — I hope that resolution will not prevail. This Convention has for the last fortnight or three weeks been discussing very diligently the able report which was made by the committee on this question. They have agreed upon all the principles, as I understand, and we have reached the last section. Now, if I understand this proposition it is, that the article thus perfected be committed to another committee to make another report; and when that report comes in, for aught that now appears, we shall have to go over the same ground again and discuss the question for the next fortnight or three weeks. It seems to me that it had better be committed to that committee for revision, with the powers designated in the resolution appointing it.

Mr. E. BROOKS — I wish to say that I have no objection to recommitting this report to the Committee on Suffrage.

The PRESIDENT *pro tem.* — The Chair decides the gentleman to be out of order.

Mr. ALVORD — I rise to a point of order. We are under a special order; that special order is the offering of amendments general in their tendency to this proposition which is before us, and the gentleman from Richmond [Mr. Brooks] cannot offer a resolution under this order of business. He must wait until we come to resolutions before his motion or resolution can be allowable.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the point of order is not well taken, as it is a resolution referring to the pend-



ing order of business. The resolution is in order as a resolution, to re-recommit.

Mr. VAN CAMPEN — I rise to a point of order; the resolution proposes a separate submission which is a question that has been put over to a certain day, and therefore cannot be entertained.

The PRESIDENT *pro tem.* — If it is, it is not in order.

Mr. E. BROOKS — It is only one part of it. If that is out of order I will strike out that part which suggests a separate division.

Mr. VAN CAMPEN — Mr. President, I move to lay the resolution on the table, that it may come up in the order of resolutions.

Mr. E. BROOKS — I submit it is not a resolution; it is a part of to-day's business and a part of the special order.

The PRESIDENT *pro tem.* — The Chair is of the opinion that if that motion prevails, it will carry the whole report with it upon the table.

Mr. LAPHAM — I rise to a question of order. The resolution as now read proposes to refer this entire subject to a committee, a special committee appointed for a particular purpose, which was simply to correct the phraseology of this article of the Constitution when the Convention had adopted it. Now, the resolution further proposes to instruct that committee to report an entire substitute for our action. I respectfully submit to the Chair that it is not proper thus to subvert the entire action of the body by sending to a committee appointed for that special purpose the subject of an entire revision of the article.

The PRESIDENT *pro tem.* — The Chair is of the opinion that it is in the power of the Convention to refer to a committee with instructions upon any subject, or to any committee. That may be one way in which the Convention may choose to dispose of this matter as provided in the resolution of July 24. The resolution, with instructions, in the opinion of the Chair, is in order.

Mr. MERRILL — I move to amend the motion of the gentleman from Richmond [Mr. Brooks] by substituting therefor the following:

The article as amended and adopted by the Convention, shall be referred to the Special Committee of Revision at the end of this day's session, with instructions to report in accordance with the terms of the resolution creating said committee.

Mr. FERRY — I rise to inquire if amendments generally are not in order?

The PRESIDENT *pro tem.* — Amendments generally, in the opinion of the Chair, are not known in this Convention.

Mr. FERRY — I heard the President *pro tem.* announce, last evening, that amendments would be in order.

The PRESIDENT *pro tem.* — The Chair was in error last evening, he corrected himself over night.

Mr. WEED — I understand the first three sections of this article have never been passed upon by the Convention; they were simply passed as sections ordinarily are, in legislative bodies for amendments generally, but not finally passed upon by a vote.

The PRESIDENT *pro tem.* — The Chair is of

the opinion that it is not necessary in the Convention, as the sections are to go to the Committee of Revision, so to call it, and when that report comes in they are passed upon as a whole.

Mr. FULLER — I desire to call up the motion to reconsider the amendment adopted to the second section.

The PRESIDENT *pro tem.* — The motion is not now in order. There are two questions pending.

Mr. FERRY — Did I understand the Chair to say that when that committee makes a report it will then be in order to offer an amendment.

The PRESIDENT *pro tem.* — The Chair is of opinion that it will not, as amended.

Mr. FERRY — I have an amendment I desire to offer.

Mr. E. BROOKS — I desire to say in reply to the gentleman from Fulton [Mr. Smith], that it was not from any disrespect to the Committee on Suffrage that I moved this special reference to the committee of five, but because I believed it to be the purpose of the Convention, after a deliberate vote, that this article should take that direction. I desire to say that I make it with a sincere desire to facilitate the business of this body. There lies upon your table, sir, about twenty odd propositions to reconsider portions of amendments which have been adopted by the committee, and if they are to be voted upon by ayes and noes, in all probability it will take this or the following day to reach some conclusion. I believe we could arrive at a direct and early result in the form of the resolution which I have submitted if it should be adopted by the Convention.

Mr. LAPHAM — A very easy mode of the disposition of this order of business would be to refer this article, as we have now perfected it with the amendments pending, to that committee. The difficulty with the proposition of the gentleman from Richmond [Mr. E. Brooks] is, that there is coupled with that reference, an instruction that the committee report back to this Convention, as the result of their action, the article of the present Constitution in lieu of the one which we have now perfected and substantially adopted. There is the difficulty in the proposition, and one which makes it extremely obnoxious to gentlemen who have been laboring for a fortnight or more to put this article in proper shape. The proposition is to throw this labor all away, take up the article of the Constitution as it now is, strike out the property qualification, and report that as the Constitution to be adopted by the vote of the Convention.

Mr. SHERMAN — I move the following amendment to the resolution of the gentleman from Richmond [Mr. Brooks]. Strike out all after "Resolved" and insert:

"The article under consideration, with the motions lying on the table relative thereto, shall be referred to the Committee on Revision, with instructions to report the article to the Convention revised as to language, but with no change of substantial provisions."

Mr. FULLER — I wish to call the attention of the Convention to a clause of the second section. As it stands now, if I understand the Chair, this committee of five would have no power to strike out, "all challenges shall be determined upon the

oath of the person challenged." We have no power to strike that out, as I understand it. This proposition was proposed —

The PRESIDENT *pro tem.*—The gentleman from Monroe [Mr. Fuller] misunderstands the Chair. The Chair has asserted no such proposition.

Mr. FULLER—If I understand the resolution of the gentleman from Oneida [Mr. Sherman] correctly, this committee of five would have no power to strike out that provision. This is a provision which was voted down as an amendment in the fourth section several times, yesterday, and it would cut off the principal benefit of the registry law if adopted. I made a motion on Friday to reconsider the vote by which that was adopted which will be cut off, as I understand it, if the resolution of the gentleman from Oneida prevails, and that will remain in the Constitution as one of its provisions.

Mr. CONGER—The effect of the resolution offered by the gentleman from Oneida [Mr. Sherman], will be effectually to prevent this body from correcting two great inadvertencies in the action of yesterday. The final clause of section four, if adopted by the committee without anything but verbal alterations, would secure in the future elections in this State far worse and more mischievous results than have ever adhered to our elections from any system of ballot stuffing, or any other of the practices which have rendered elections in certain districts of the State obnoxious to public censure. Now, sir, we have this clause, that no person shall vote at any such election who shall not have been registered according to law. So that it is possible in any district for persons to concert a particular purpose in the election to destroy the register before it is perfected, and make it impossible to have a new register completed within six days, yet the law is imperative that no person shall vote at that election in that district. So we promote by this provision a wholesale system of fraud, violence and oppression to be enacted at any poll where persons are willing to concert such practices. Then again in the last clause of section 6, the Convention created a security the same as in the last clause of article 12 of the Constitution of 1846 precisely the same as that secured to the people of State in the Constitution of 1821 against all other oaths, declarations or tests. This is taken away from the people of this State. Now, before the Convention are willing to commit two wrongs of this character I hope gentlemen on the other side will have the magnanimity to state whether they really intend that one such abnormal provision as the first shall be inserted, and such a time-honored security of the liberty of the citizen be omitted from the Constitution of the State.

Mr. C. C. DWIGHT—Would the carrying off or destruction of the register by a mob destroy the fact that a man had been registered.

Mr. CONGER—But suppose some persons had not been registered?

Mr. DWIGHT—They would not be entitled to a vote, even though the register was not destroyed.

Mr. CONGER—The gentleman does not take the point. He is unable to see the difficulty which this section makes possible—that the registry

may be partially completed in accordance with the law, and before it is finally completed it may be destroyed.

Mr. ALVORD—What is the effect when mobs destroy the ballot-boxes? Does that vitiate the election entirely?

Mr. CONGER—The action of a mob is not in accordance with law, but this act would be in accordance with the Constitution.

Mr. ALVORD—Stealing the register in accordance with the Constitution?

Mr. CONGER—Under such a provision of law as this, unquestionably.

Mr. A. J. PARKER—There is certainly something in this. I hope—

The PRESIDENT *pro tem.*—Is the gentleman speaking against the amendment?

Mr. A. J. PARKER—I am speaking in favor of modifying the proposition.

The PRESIDENT *pro tem.*—Two have already spoken in opposition to it.

Mr. A. J. PARKER—I wish to have it modified. Suppose a registrar refused to register, is that to deprive all the people of the district of the right to vote?

The PRESIDENT *pro tem.*—That is not under discussion.

Mr. MERRILL—If it is in my power I would accept the amendment of the gentleman from Oneida [Mr. Sherman].

The PRESIDENT *pro tem.*—The gentleman is at liberty to accept the amendment.

Mr. MERRILL—Then I accept the amendment of the gentleman from Oneida.

Mr. LAPHAM—I hope the amendment of the gentleman from Oneida [Mr. Sherman], which has been accepted by the gentleman from Wyoming, will be read. I enter as heartily as any member of this Convention can in the purpose expressed by the gentleman from Richmond [Mr. E. Brooks]. He calls this a useless discussion, and places this subject, which we have debated so long, in the hands of a committee where the sections can be put in proper shape for the final act. I take it that the proposition, as avowed by the mover, originated in a sincere motive to accomplish this result, and the adoption of this amendment effects that end. It simply takes out of the proposition of the gentleman from Richmond [Mr. E. Brooks] the instructions there contained, to report entirely adverse to our action. That instruction, I submit, is useless and derogatory to the action which we have thus far taken upon the article under consideration. For that reason the reference which will prevail, if the amendment of the gentleman from Oneida [Mr. Sherman], is adopted, will dispose of this subject, and the Convention can take up some other branch of business, and there will be no further occasion for a clamor on the part of any public journal that the majority of this Convention are delaying the discussions upon this subject for partisan or other purposes, and that the responsibility for delay lies at the door of the majority of this body. I desire that all occasions for articles of that description, and clamors of that description may be taken away—and this reference will put an end to that subject. There are many other reasons which might be mentioned, one of

which I will mention, is the importance of the remaining business to be disposed of by the Convention. I agree with the gentleman from Richmond that we have already devoted to the consideration of this subject more of the time of the Convention than justly belongs to its importance. As to where the responsibility for that rests I leave that subject to be determined at another time and another place than this.

Mr. McDONALD—I would like to ask for information, whether, if this resolution passes, and it goes to this committee, there will be any opportunity hereafter of amending this article of the Constitution.

The PRESIDENT *pro tem.*—The Chair is of opinion that there will.

Mr. McDONALD—On the coming in of the report—

The PRESIDENT *pro tem.*—The Chair cannot instruct the gentleman any further until the report arrives.

Mr. POND—It seems to me that this resolution is not right.

The PRESIDENT *pro tem.*—The gentleman has already spoken to that effect.

Mr. POND—I have spoken for it.

The PRESIDENT *pro tem.*—Two have already spoken in favor of the resolution.

Mr. POND—I move to amend then.

The PRESIDENT *pro tem.*—The gentleman is in order by moving to amend.

Mr. POND—I move to strike out the clause sending the amendment to this committee. It was said when this committee was appointed they were a committee of revision, and this report was to be sent to them after it was completed in this Convention; they were merely to revise and put it in proper form. The result of this amendment, if I understand the proposition of the gentleman from Oneida [Mr. Sherman], will, in effect, be sending this whole subject to this committee, which will constitute them a new committee on the right of suffrage and when their report comes in we will be just where we were four weeks ago. I move to strike out that part of the resolution sending the amendments to the committee.

The PRESIDENT *pro tem.*—The Chair is of opinion that that is tantamount to striking out the resolution.

Mr. POND—The resolution then will be as I understood was originally contemplated?

The PRESIDENT *pro tem.*—The gentleman's motion is not in order, inasmuch as it is tantamount to a negative of the resolution.

Mr. SEYMOUR—I wish to make an inquiry of the Chair. There are some twenty questions on reconsideration pending. I ask the Chair, if this motion prevails, whether, if these are lost, we will have a chance to reconsider?

The PRESIDENT *pro tem.*—The Chair is of opinion that they would be lost, inasmuch as the Convention will have disposed of the report of the Committee for the present.

Mr. RUMSEY—I move to amend the motion of the gentleman from Wyoming [Mr. Merrill] as amended, by prefixing thereto the words, "at two o'clock P. M. this day unless otherwise disposed of."

Mr. SHERMAN—I accept that amendment.

Mr. ALVORD—I am in favor of this proposition, and for the purpose of calming the minds of gentlemen—

Mr. KERNAN—I rise to a point of order—that two gentlemen have spoken on that side.

The PRESIDENT *pro tem.*—The gentleman from Onondaga is in order.

Mr. ALVORD—I stated I was in favor of this resolution now as amended, provided it passes; and I desire to state to gentlemen here who were a little afraid of its effects upon their—

Mr. FERRY—I rise to a point of order. The amendment was accepted by the gentleman from Oneida [Mr. Sherman] when the resolution was that of the gentleman from Wyoming [Mr. Merrill]. He had accepted the previous amendment and it would be for him to accept the other amendment. It was not in the power of the gentleman from Oneida [Mr. Sherman] to accept it.

The PRESIDENT *pro tem.*—The Chair did not recognize it as accepted. He recognized it as the amendment made by the gentleman from Steuben [Mr. Rumsey].

Mr. ALVORD—I hope I shall be able to get through with my remarks. If any gentlemen desire to rise on other questions, I will wait until they get through.

The PRESIDENT *pro tem.*—The gentleman from Onondaga [Mr. Alvord] will proceed in order.

Mr. ALVORD—I wish to say that on the incoming of the report of the committee, and at almost any stage of the proceedings of this Convention, motions can be made to recommit, with instructions to put in direct matter which the reconsideration now contemplated to put in the article, or take from it. There is no difficulty in reaching this case at any or every time during the proceedings of the Convention under its rules. It can immediately, upon the incoming of the report of the select committee of five, or the Committee on the Right of Suffrage, be sent back again to the same committee with instructions, and as suggested by the gentleman from Monroe [Mr. Fuller], we can get at the motions to reconsider, made by various gentlemen on this floor. It simply takes it out, for the present, of the body of this Convention, and permits us to go through with some other business.

Mr. MERRILL—The idea I had in mind when I offered my amendment in the first instance, was to give this day to enable the Convention to perfect the article as agreed upon and adopted by the Convention. I accepted the amendment of the gentleman from Oneida [Mr. Sherman], which provides for an immediate disposition of the whole matter, because I have become convinced, we should not improve the article by further amendments. If in order, I will accept the amendment fixing the hour at two o'clock.

The PRESIDENT *pro tem.*—It is in order.

Mr. GREELEY—If the gentleman from Onondaga [Mr. Alvord], is correct, I must oppose this whole proposition as now amended, and ask that the Convention vote it down. If it is not to be settled on, but to be opened again when the report comes in, then we have adopted nothing and settled nothing, and we had better go on now till we complete it.

Mr. ALVORD—Will the gentleman allow me



to ask him a question? Have we not now the rule that at any time during the whole of this Convention, a motion to reconsider can be placed on the table, and the question of reconsidering can be brought up after three days with reference to any of our proceedings? How can we avoid it by any possibility, without going to work and reconstructing our rules?

Mr. GREELEY—I cannot answer the gentleman's question about rules, but I see plainly this is to end in nothing. I am willing to go on voting to-day till we decide on something, but if you are going to refer this to a committee and have it brought back again—I desire to say I hope you will not refer it to the Suffrage Committee, and I see no good in referring it all.

Mr. OPDYKE—I hope the resolution as amended will prevail. I agree with the gentleman from Onondaga [Mr. Alvord] that it is parliamentary and also that it is proper that if we have committed any serious errors, and shall hereafter discover them that we shall have an opportunity of correcting them—not by renewing and prolonging the debate, but by taking the question immediately thereon as we shall be prepared to do, and as we shall be compelled to do. As the session draws to its close, we shall probably have a change of our rules to expedite time. It has become evident to every member of this Convention that something must be done hereafter to divide the time more effectually between the various propositions that come before us, or the result of our labors will be lost—we will be unable to complete them in time to submit them to the people; some of the most important amendments we contemplate considering will have to go without consideration. It seems to me, the resolution now before us is the best, for saving time, of any that has been presented.

Mr. E. BROOKS—I offered my resolution with a sincere desire to facilitate the business of this body, but, as it has failed of that purpose, for the present I withdraw it.

Mr. MERRITT—I rise to a point of order. The resolution having been amended, I think the mover cannot withdraw it.

The PRESIDENT *pro tem.*—The Chair holds it is in order for the gentleman to withdraw it.

Mr. FULLER—I desire to call up my motion to reconsider the vote by which the amendment of the gentleman from Ontario [Mr. Lapham] was adopted. The effect of that amendment was substantially to nullify the registry laws as they now stand, and the registry laws as continued with the same force since 1861. As the registry law now stands, before a person who is challenged upon the ground that he is not a citizen before the registry board, he must produce his naturalization papers. This amendment, if carried, would nullify any such provision. It was proposed to add a similar amendment several times yesterday at the end of the fourth section, and it was voted down by this Convention, and on Friday the Convention seemed to overlook the fact that it was adopted as an amendment to the second section. By the Revised Statutes also, or by the election laws of 1842, it is provided, that if any person is challenged on the ground that he

has been convicted of an infamous crime, the record of the conviction shall be produced; so if he has been pardoned, the proof is the production of the pardon. But the effect of this amendment is to cut off all other proof and in all cases to make the right of the person challenged to depend on his own oath. I think the amendment should be reconsidered and voted down.

Mr. MASTEN—I hope this will not be reconsidered. I think the gentleman from Monroe [Mr. Fuller] labors under a misapprehension as to its effect. It does not apply to the case of registering, but rather applies to the proceedings which are to take place at the election, and before the inspectors of election. Now, sir, I am opposed to constituting the inspectors of election into a judicial tribunal to determine any of the questions which may arise there. I am in favor of the provision that it shall be determined upon the oath of the party who offers his vote. It is the simplest way of doing it, and it puts the whole responsibility upon him. Now, take the case of a man convicted of a crime. A party may have been convicted of an offense which disqualifies him. The record may not be there, and if the rule which the gentleman declares is the rule should prevail, why then the person who offers his vote would not be compelled to speak of the fact whether or not he was disqualified before he could demand the proof and his vote would be cast. If this amendment of the gentleman from Ontario [Mr. Fuller] remains (for I believe it was proposed by him), then the question can be propounded to the person who offers his vote. If he has been pardoned, that question he can also speak to. I hope this will be retained because it applies only to what is to take place at the election, not as to the registry at all, and it avoids the constituting of an irresponsible temporary tribunal, and puts the whole responsibility upon the person, and he can easily be punished if he commits perjury in getting in his vote.

Mr. E. A. BROWN—I hope the reconsideration will prevail, and I hope so for the reason that the effect of striking out this provision will be to protect the person who is challenged at the polls. It is in the recollection of every gentleman, I presume, within the sound of my voice, that men have been challenged at the polls and asked questions they were unable fully and definitely to answer; unable to state when and where precisely they were naturalized; unable to state some of the facts from memory; and under this provision as it reads, they could not bring to their aid the Revised Statutes; they could not bring to their aid their certificate of naturalization, nor could they bring to their aid their pardon from the Governor, nor any other thing except their naked memory. These people should have this privilege; should be able to back up their application to vote by such evidence as they may have at hand for that purpose, such as may contribute to strengthen their recollection, otherwise a man might be embarrassed when he is asked the usual questions, and might be unable to recollect distinctly, or to answer the questions which the board think he ought to answer correctly, and they may refuse his vote. For his protection he should be allowed to bring to his

aid any fact, papers or documents within his reach to substantiate his right to vote. As this stands, he could not bring to his aid any special statute that might be passed for his benefit, nor could he bring his discharge from the army which authorizes a certain class of men to be naturalized, though they had been in the country but for a single year; he might prove he was born in Germany, and might have been in the United States for but one year, and as the law once stood he could not be naturalized. He might plead his discharge from the army to show under the laws of the United States he was in a condition to be naturalized, otherwise he might be defrauded of his vote by not being able to bring to his aid such evidence as I have alluded to.

Mr. CHESBRO—I do not understand the argument of the gentleman from Lewis [Mr. E. A. Brown], and I am opposed to striking out this provision which has been once inserted by the voice of the Convention. As I understand his argument, it is in aid of the person challenged that he desires to have this privilege stricken out. I inquire whether, if the man is challenged at the polls, whether any evidence he can produce there will save him the necessity of taking the oath, provided the challenge continues, as it will not aid him that he has a discharge from the army of the United States, or a pardon from the Governor, or any other fact which might show that he is a legal voter, provided always the challenge stands. That is why the challenge should depend upon the oath of the person challenged, and that being the only answer the gentleman makes to the argument of the gentleman from Erie [Mr. Masten], it is unnecessary that I should detain the Convention any further.

The PRESIDENT *pro tem.* announced the question to be on the motion of Mr. Fuller to reconsider.

Mr. BICKFORD—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Fuller, and it was declared carried by the following vote:

**Ayes**—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, E. A. Brown, W. C. Brown, Carpenter, Case, Cheritree, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Eddy, Endress, Evarts, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Huntington, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Sherman, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams—79.

**Noes**—Messrs. Barnard, Barto, Bergen, E. Brooks, Burrill, Cassidy, Champlain, Chesbro, Church, Clinton, Cochran, Collahan, Comstock, Conger, Corning, Develin, Fullerton, Garvin, Gerry, Hale, Hardenburgh, Hitchman, Kernan, Law, Livingston, Loew, Lowrey, Magee, Masten, Mattice, Monell, More, Morris, Paige, A. J. Parker, Potter,

Robertson, Rolfe, A. D. Russell, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, S. Townsend, Veeder, Verplanck, Weed, Wickham, Young—51.

Mr. HALE—I shall vote in favor of inserting these words, and I voted against the reconsideration on this ground. It strikes me that the last words in the fourth section render the amendment of the gentleman from Ontario [Mr. Chesbro] eminently proper. No person should vote at any such election that has not been registered according to law. If there is any object in the registry law it is to determine who are the legal voters, and I would confine the duty of the inspectors of election to hear and determine on the oath of persons challenged, and not constitute them a judicial tribunal at that time to receive evidence in regard to it. The officers who take the registry are the ones who should make the judicial examination and require evidence other than the oath of the party.

Mr. FULLER—As the law stands now, the same challenge precisely may be made before the registry board as can be made at the polls. They are made precisely in the same manner, and the law provides how they shall be determined, and there is a necessity that challenges shall be made and determined by the registry board as well as at the polls, and if challenges are made there, the Legislature should have the power to provide how those challenges should be determined. But if this amendment remains in force, upon a challenge before the registering board on the ground that a person was not a citizen, the Legislature could not compel him to produce his naturalization papers. The challenge would have to be determined on his oath alone, so that if a man was challenged on the ground that he was convicted of a crime, although he was convicted of a crime, and was unworthy of credit on that account, the only test of his right to vote would be his own oath, and you could not require the production of the record.

Mr. EVARTS—I voted for the reconsideration, but I do not see my way clear to reject entirely this protection of the right of suffrage. Our general rule, Mr. President, as we all know, in the administration of law here is to punish the commission of crime, and not to prevent its commission by restrictions aimed at that object. Now unquestionably it is incongruous that we should allow the oath of the elector when he is challenged, to displace a record of conviction, and it is that incongruity I imagine that has led most of those who have voted to exclude this clause from the Constitution. I believe that in general the adjudication of the right to vote to the exclusion of the vote, should not be entrusted to any board whatever, but that the right to vote when dependent upon the inquisition, then for the first time made, and not previously before decided in respect to the cause of challenge, should be determined in favor of the vote upon the oath of the elector leaving him to be punished for giving a spurious vote, not being entitled thereto, and guarding the ballot-box by that security. I move, therefore, this amendment to the section—

The PRESIDENT *pro tem.*—No amendment is now in order.

Mr. EVARTS — I would suggest, then, that in lieu of including this rigid requirement that all challenges shall be determined upon the oath of the person challenged, a clause of this kind would meet the principles contended for on both sides, to wit:

"All challenges, except for cause of conviction for crime, shall be determined upon the oath of the person challenged."

Mr. CHESEBRO—If it is in my power to accept that amendment I would be willing to do so.

The PRESIDENT *pro tem.* — It is rather an anomalous and awkward position in which the Chair finds itself in the consideration of an amendment which was adopted two or three days ago, and now comes up to be reconsidered, after much else has been discussed and settled and that is the reason the Chair said it was not in order to amend. The article has almost passed out of the hands of the Convention, but is still under its order, having been substantially adopted by the Convention. Now, we are going back to pick up these motions to reconsider, which have been dropped along through the debate. It seemed to the Chair proper, although it is a new question, that when the motion to reconsider is adopted, the consideration of the amendment should be confined to the identical, strict proposition contained in the amendment which was adopted or lost, therefore the Chair ruled, when the gentleman from New York [Mr. Evarts], was about to offer an amendment, that amendments were not in order. It may be that the Chair is wrong in that, but that is his present opinion, but it is an anomalous position in which we stand in regard to this motion to reconsider, under the peculiar rule we have for reconsideration of votes. The Chair has never known it to be adopted in a parliamentary body before.

Mr. DEVELIN—I would respectfully submit to the President and to the Convention, that when this amendment is reconsidered it stands in the same position it did when it was originally offered. I cannot see any difference; and, if that be so, the mover of the amendment can accept any amendment proposed to it, although the amendment was not in order for discussion or consideration by the Convention.

The PRESIDENT *pro tem.*—The Chair will take the sense of the Convention upon the question of the adoption of the amendment.

Mr. E. BROOKS—Upon the point of order which has been suggested by the Chair, I suggest and maintain that we are under the operation of parliamentary law, and that we are precisely where we were when this amendment was submitted by the gentleman from Ontario [Mr. Lapham], and having receded to that point, it is as much in order to move an amendment now as it was before the amendment was adopted.

Mr. GREELEY—I shall oppose this amendment in any form, but I submit to my friend, who also opposed it, that we allow, by the unanimous consent of the Convention, the friends of the amendment to amend it as they choose.

Mr. GARVIN — Does the gentleman mean by that to allow all amendments?

Mr. GREELEY — No, only this amendment. I shall oppose the amendment on this ground, Mr. President: A man comes up to vote, and we

have a hundred names on the poll list, where there are no voters. Here is John Wilcox comes to vote. Well, ten of us know he is not John Wilcox; we know he is not that man that is on the registry, notwithstanding he says he can swear he is. He swears through and votes, and that point is not covered by this amendment, and I shall vote against it. I hope those opposed to it will allow the friends of the amendment to perfect it by the amendment they propose.

The PRESIDENT *pro tem.*—The Chair would prefer that some gentleman take an appeal from his ruling, so as to settle this question.

Mr. DEVELIN — In accordance with the suggestion of the Chair, I appeal from the decision of the Chair.

The PRESIDENT *pro tem.*—The Chair so understands the gentleman.

Mr. DEVELIN — And I appeal for this reason, that it is an unsettled point, and it is very important that it should be settled by the Convention, because this question will be arising almost every day; but I should suggest, if it is decided that no amendment can be made, it will be a cause of difficulty when amendments are considered and cannot be amended, although the Convention may desire the amendment to be made.

The question was then put on sustaining the decision of the Chair, and it was declared carried.

Mr. CONGER — I call for the count.

Mr. GREELEY — I hope, by unanimous consent, this amendment will be allowed.

Mr. EVARTS — I think I am now in order to move an amendment.

The PRESIDENT *pro tem.* — The Chair rules "no." The question put by the Chair was: "Shall the decision of the Chair stand as the decision of the Convention?" and that was sustained.

Mr. CONGER — Before the Chair announced that the decision of the Chair was sustained, I called for a count.

The question was then put on sustaining the decision of the Chair, and, on a division, it was declared not sustained by a vote 53 to 60.

Mr. DEVELIN — I desire to have it inserted on the minutes that I made this appeal under the suggestion of the President.

The PRESIDENT *pro tem.* — It will be so entered.

Mr. CHESEBRO — I now desire to say I will accept the amendment of the gentleman from New York [Mr. Evarts].

Mr. EVARTS — I have not yet made the amendment.

The PRESIDENT *pro tem.* — I have not heard any amendment offered.

Mr. EVARTS — I now rise to make an amendment, if it is in order. I move to insert after the word "challenges" in the clause proposed to be inserted into the Constitution "all challenges except for conviction for crime, and for omission to register, shall be determined upon the oath of the person challenged."

Mr. M. I. TOWNSEND — I would ask the gentleman from New York [Mr. Evarts] if he would not add to his amendment the words "all challenges at the polls." There is some difficulty felt in the Convention, that this may be made to apply



to the challenge of a man's right to register. I only understood the mover to desire to have it apply to challenges at the polls.

Mr. EVARTS—I desire to have my amendment apply to all objections of voting that are, for the first time, to be judicially determined. I understand the clause of the Constitution as already accepted to provide for registration, and I propose, therefore, that that should stand as a criterion of the right to vote in that respect, and not the elector's oath. So, too, for the commission of crime. I propose that the record of the crime should stand to exclude the vote, notwithstanding the oaths of the electors. But I know of no other ground of objection to an elector, which upon challenge, should not in taking the vote be disposed of in his favor, upon his oath, leaving him to the punishment prescribed by law for giving a false or spurious vote. Now, if my friend from Rensselaer [Mr. M. I. Townsend] will point out to me, and to this Convention, any cases in respect to registration which may need some further modification, I perhaps would be ready to give my assent to it.

Mr. M. I. TOWNSEND—The gentleman from New York [Mr. Evarts] did not understand me. I do not desire to have it apply to registration. I desire to have it apply simply to challenges at the polls. The word "challenge" in the statute affecting registration is used in reference to objection made at the time of registration, and it was for the purpose of confining this to challenge at the polls that I desired the words added at the close of the amendment of the gentleman from New York [Mr. Evarts].

Mr. BARNARD—I wish to suggest that what has been stated by the gentleman from Rensselaer [Mr. M. I. Townsend] is perfectly correct, that at the polls we should not be delayed by inquiring into the right of voting, because if we do not take simply the oath of the voter, the person challenging may say, "I have got a dozen witnesses to prove that the man is not a resident of this district;" and he will bring forward witness after witness who may give testimony on that subject, and the person challenged may find it necessary not only to put in his own oath, but to call others to prove he is a voter in the district, and the inspector may be a whole day taking proof whether one voter resides in the district, and thus all other voters are excluded from voting.

Mr. McDONALD—I am opposed to any amendment, for the simple reason that we are now venturing on legislation again. We are now determining what proof we shall have, and seeing whether we shall determine to have the proof at the polls, or at the registry, or at this place or that. It seems to me we have got to leave a little something for the Legislature to do, and if we leave to them, as we proposed to do, to say what shall be the evidence used at the registry, we might as well leave to them to say what evidence shall be used at the polls, or leave it as it is in the Constitution; and the argument of the gentleman from Kings [Mr. Barnard], and the argument of the gentleman from Rensselaer [Mr. M. I. Townsend], and all the arguments used here, will be very proper at that time, and I doubt not, the

Legislature will then determine what is the best evidence at either or both places.

Mr. HITCHCOCK—Is another amendment now in order?

The PRESIDENT *pro tem.*—It is in order.

Mr. HITCHCOCK—I offer the following amendment:

Insert after the word "challenges," the words "at the polls."

Mr. EVARTS—I accept this proposition for this reason alone, that I think the whole subject of registration may be more safely left to the Legislature than these matters that we are now disposing of.

The PRESIDENT *pro tem.*—It is not in the power of the gentleman from New York [Mr. Evarts] to accept the amendment. It is an amendment to the proposition of the gentleman from Ontario [Mr. Chesebro].

Mr. CONGER—I will present very briefly to the Convention, the reason why any challenge allowed before the board of registry, would operate very severely on a certain class of citizens who have not been adverted to in this discussion. The gentleman from Monroe [Mr. Fuller], who first spoke on this question, seemed to think it was a matter of great importance, that every naturalized citizen should produce his certificate of naturalization, and if he had lost it, or could not recur to the time or the court in which he was naturalized, and could not readily obtain a copy of that certificate, that would render it a ground of challenge by which he should be refused registry as well as voting. Now, Mr. President, under the Constitution of the United States, as proposed to be amended, we have got two classes of citizens, native-born citizens and naturalized citizens. If you allow this question to be opened I want to know when my honorable friend from Monroe [Mr. Fuller] comes to be challenged, and he is challenged on the ground that he is not a native-born citizen of the State of New York, or of the United States, whether he is to be called upon to produce a copy of the baptismal register to show where he was born and whether he is truly a citizen of the State of New York. The moment you adopt a rule in the one case you will make it applicable to the other, and the attempt to embarrass the naturalized citizen in regard to the certificate of his naturalization will apply to the native-born citizen in order to oblige him to prove that he is a native born citizen. You perceive that if you limit this to the amendment proposed, if you limit the power of a citizen to determine a challenge of this kind on his oath at the polls, you subject him to the very greatest inconvenience when he comes to be registered, and an embarrassment of this kind at the registry office might work as great a detriment as a challenge at the polls. I think, therefore, that we ought to have the general provision by which every citizen could purge a challenge on his own oath.

Mr. LAPHAM—I am opposed, Mr. President, to the amendment as well as to the original proposition, upon this ground, that we are again entering upon the field of legislation. This whole subject is properly a matter which should be regulated by legislative action, and it cannot be made with

any propriety the subject of a provision in the Constitution. I respectfully submit to the consideration of the honorable gentleman from New York [Mr. Evarts], that it is better to leave this whole subject to the control and direction of the Legislature in reference to the laws which may be enacted for the purpose of providing for registration of voters, and providing for the conduct of electors at the polls. There is no necessity for undertaking in the fundamental law to make a provision which cannot be changed as long as the Constitution lasts, although experience may show that changes from time to time are not only desirable but absolutely necessary to preserve the purity of the elective franchise. The Legislature can, from time to time, adapt the laws to the necessity of the times by the experience which shall grow up in the administration of affairs under the Constitution, but if we put into the Constitution this provision it is there to remain, and cannot be altered, however defective or inapplicable it may be found, and for that reason I hope that nothing upon this subject will be put into the Constitution, and that the original proposition of my colleague from Ontario [Mr. Chesebro] will be stricken out, and that the amendment which is now proposed will be rejected also.

Mr. CHESEBRO — I do not concur with my colleague from Ontario [Mr. Lapham] in the views which he has just suggested to the Convention. I regard the preservation of this right to the elector as a fundamental right.

The PRESIDENT *pro tem.* — Is the gentleman speaking in favor of this amendment or opposed to it?

Mr. CHESEBRO — I am opposed to it.

The PRESIDENT *pro tem.* — Two have already spoken against it.

The question was then put upon the amendment of Mr. Hitchcock, and upon a division it was declared carried by a vote of 56 to 25.

The question was then put upon the amendment of Mr. Chesebro as amended, and on a division it was declared lost by a vote of 40 to 73.

Mr. VAN CAMPEN — I desire to move a reconsideration of the vote on the proposition of the gentleman from Ontario [Mr. Chesebro] inserting the words, "Nor while a student of any seminary of learning."

The question was put upon the motion of Mr. Van Campen to reconsider, and on a division it was declared lost by a vote of 44 to 53.

Mr. VAN CAMPEN — I call for the ayes and noes. A sufficient number seconding the call, the ayes and noes were ordered.

Mr. GREELEY — I desire to explain simply that what the friends of reconsideration ask is not any legislation in favor of students. We do not wish the Convention to decide that a student gains a residence by going into another town or county to vote. Perhaps he does, and perhaps he does not. It depends upon circumstances over which this Convention can have no control. I have known of men going to college and becoming residents of the towns in which they were studying, and I have known other cases in which they did not. What we ask is that this Convention do not attempt to legislate on a question which this Convention cannot possibly decide; a question of

circumstances wherein it may be that the student goes to the other town to reside, and may be he does not; we ask you to let the facts govern the case; let the authorities, when they come to register a voter, decide whether the voter is a resident of a certain township or not, and not arbitrarily say that when a man has gone to Auburn or Geneva or some other town to be a student it disqualifies him from being a voter for four years by that fact. I ask this Convention not to decide that question against the facts, as you must do. Let the student like the day laborer and the mechanic and the professor and the clergyman, stand on one foundation. If he has changed his residence, then he has a right to vote in the place to which he has removed. If he has not changed his residence, he has not the right to vote. I ask you not to make this discrimination against a class of men who are not less worthy, who are at any rate not less intelligent than other men, to become citizens. They have the same right as the hod-carrier and as every other man, and you should not, by an arbitrary rule, determine that they shall be disfranchised, it may be, for four or seven years.

Mr. C. C. DWIGHT — I am in favor of a reconsideration of the vote by which this amendment was adopted, for the reason that I have observed the operation of the provision of the present Constitution in its application to the students in the theological seminary located at the city where I reside. There are in that institution some forty or fifty young men, most of whom have before coming there, pursued a course of liberal education in one or other of the colleges of the country. They cut loose from their parental homes, many of them, when they went to college. They are young men who, while yet in college, have been supporting themselves by teaching school, and gaining a temporary support, and the means for the further prosecution of their education. They come to Auburn, and enter the theological seminary and precisely the same is true in regard to many other similar institutions. They come there and enter the theological seminary, with no other home than that at which they are thus pursuing their studies. They are of age. They have cut loose, as I said before, from the parental home. They have made no settlement for life, but while they are studying, the place at which they reside for the purpose of pursuing their studies is their home, and I ask, sir, why they should not be allowed by thus settling in such a place to gain a residence for the purpose of voting? If they have been one year in the State, four months in the county, and otherwise have conformed to the requirements of the Constitution, give them a residence there. They have no other residence, and if they have no residence there, they are deprived of the privilege of voting.

Mr. BARKER — I hope the amendment offered by the gentleman from Ontario [Mr. Chesebro] will be retained. I think there is a misapprehension on the part of my friend from Cayuga [Mr. C. C. Dwight] as to the extent and interpretation of the Constitutional provision as it now stands. There is no provision against the student gaining a residence in the place where the college is located in which he may be a student. It

aims at the provision that, when the student is yet connected with the family circle, it shall not be charged to him that he gains or loses a residence while he is in college. But he may gain a residence at the place where the college is located by going to that place and making it his home, and there is no interpretation of the provision as it stood in the Constitution of 1846 against the suggestion which I now make, and it is to protect the student that this provision is inserted, and I claim it should be retained.

Mr. MERRITT—I would like to ask the gentleman whether he understood the proposition "while there remaining" as equivalent to "by reason of attending." If it is simply that he shall not acquire or lose a residence by reason of attending, his proposition may probably be correct.

The PRESIDENT *pro tem.*—The gentleman is not in order.

Mr. CHESEBRO—I am in favor of retaining this proposition and against the reconsideration of the motion for the very reason suggested by the gentleman from Westchester [Mr. Greeley]. I am opposed to any class legislation in regard to electors, therefore I agree with him that no man should gain or lose his residence. If persons go to a seminary of learning for the purpose of taking up their residence there and becoming residents, and if that is their only home then they are residents of that locality, and can vote, and there is no prohibition against it in the Constitution. But what I object to is, they may go to a seminary and vote there, not having lost a residence at their native home. This was a provision of the Constitution of 1846, and I have heard no complaint of it anywhere, and I do not see why it should not be retained in this Constitution.

The question was then put on the motion of Mr. Van Campen to reconsider, and it was declared lost by the following vote:

*Ayes*—Messrs. C. L. Allen, Alvord, Andrews, Archer, Armstrong, Artell, Ballard, Beckwith, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Cheritree, Corbett, C. C. Dwight, T. W. Dwight, Ferry, Flaglor, Fowler, Gould, Greeley, Hammond, Hand, Hitchcock, Huntington, Hutchins, Ketcham, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Opdyke, C. E. Parker, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Sherman, Spencer, Stratton, M. I. Townsend, Van Campen, Van Cott, Wakeman, Williams—51.

*Noes*—Messrs. A. F. Allen, Baker, Barker, Barnard, Barto, Beadle, Beals, Bell, Bergen, E. Brooks, Burrill, Carpenter, Cassidy, Champlain, Chesebro, Church, Clinton, Cochran, Colahan, Comstock, Conger, Cooke, Corning, Eddy, Endress, Evarts, Farnum, Folger, Fullerton, Garvin, Gerry, Graves, Hadley, Hale, Hardenburgh, Harris, Hitchman, Houston, Kernan, Krum, Landon, Law, Livingston, Loew, Lowrey, Ludington, Magee, Maston, Mattice, Merwin, Miller, More, Morris, Paige, A. J. Parker, Pond, Potter, Rathbun, Reynolds, Rogers, Rolfe, Schell, Schoonmaker, Schumaker, Seymour, Strong, Tappen, S. Townsend, Veeder, Verplanck, Wales, Weed, Wickham, Young—74.

Mr. VERDER—I desire to call up a motion

made by myself, to reconsider the vote by which the proposition of the gentleman from New York [Mr. Daly] was adopted yesterday.

Mr. GREELEY—The object of the reconsideration, as I understand it, is mainly to restore a clause which the Convention yesterday, after careful deliberation, inserted in these words: "and the Legislature shall provide for the registration of any such electors as shall be, unavoidably absent from the place of registration in their respective districts." By a full vote, after a fair discussion, the Convention decided that those words should stand as a part of the Constitution, but by indirection and by inadvertence on the part of the gentleman who moved the amendment [Mr. Daly] these words were not included in the provision, whereby the clause generally was changed. He did not desire to strike that out, and I am sure the Convention did not, and we ask to reconsider simply to be enabled to restore these words which have been thus struck out by mistake. I trust the Convention will allow us to reconsider, and if it shall so decide, to restore this clause.

Mr. ALVORD—It was with very great deliberation, and after due consideration and argument; and notwithstanding the work was so well done as supposed by the gentleman from Westchester [Mr. Greeley], this Convention, by a very much more decisive vote, agreed they had been mistaken, and they put in the proposition named by the gentleman from Westchester [Mr. Greeley]. I agree with the gentleman from Westchester in endeavoring to make this matter of registration as perfect as it possibly can be, but it seems to me he departs from the result he aims at the moment he permits any amendment of this kind to be entertained by this Convention or to be inserted in the Constitution, and we might as well throw all registration to the winds as to entertain any such motion as this; it is opening up the whole matter from beginning to end, and will lead to a great deal more corruption than by any possibility could be practiced if we leave this as it is. I hope the motion will not prevail.

Mr. BARKER—I desire to say one word before the Convention votes on this question, and I will call attention to the effect of the section as it now stands. It provides that no elector shall vote unless his name is registered. That is one positive provision. Another provision is, it shall take place six days before an election—another positive provision. That the Legislature shall provide by law the details of this registration—another positive provision. That is all there is in the section in regard to it, and in my judgment, it had better be stricken out and be left to the wisdom of succeeding Legislatures. If the provision of the gentleman is introduced, it has this effect, that it puts it beyond the power of the Legislature to require a personal registration. I do not believe there is much wisdom in requiring it, but if experience shall show that it is necessary, let that be a legislative enactment. The gentleman is not very wise as I apprehend, in the use of his language when he says, "persons may be excused from making personal registration if they are unavoidably absent." There is no tribunal that can decide that question. It is one of dis-



...may be settled by considering the circumstances. But I am mainly opposed to the proposed reconsideration of the section as it now stands. It is in my judgment and it is dangerous to add new provisions. I move the motion to reconsider and be agreed.

**Mr. SHERMAN**—I made this motion, sir, and I move to reconsider this vote for the purpose of striking out this provision, providing for registration of voters necessarily absent from their election district at the time the registration is going on. This amendment as proposed, does not provide for the voting of a party who is not registered. There is no such proposition; but it is when a party is unavoidably or necessarily absent from his election district at the time the registration is going on, that the Legislature shall, by law, provide a means by which that absent elector's name may be placed upon the registry list. That is the only object of the amendment. In the city of Brooklyn, many cases have come under my own personal observation where electors have been necessarily absent from their residence at the time of registration, but returned in time to vote, but by virtue of the law of 1866, which required a personal attendance before the registration board, they were precluded from voting. I myself came very near being precluded from voting because of that law, although I have voted in that election district for the past ten years and was known to be a voter. I was out of town and detained, but by good fortune I was successful in getting back, just absolutely in time to get my name upon the register. Is this fair? It is unfair when the parties are positively known to all the board of registry, who are absent from the registration. It is unfair that they should not have the means of placing their names upon the register, where they are known beyond all question to be voters, and to be necessarily absent at the time of registration. With us we have several gentlemen who are engaged as pilots—Hell Gate and Sandy Hook pilots—who reside in the city of Brooklyn, and are often out on a cruise to bring in vessels, through the Hell Gate channel or the Sandy Hook channel, and they may be detained there upon the day of registration, and consequently they are precluded from voting, yet everybody knows they are voters. Hundreds of these instances are occurring from time to time; parties are unavoidably called out of town, their families may be away and an accident may happen, and they may be telegraphed for to come immediately, and before they can return the time for registration has expired, and, by virtue of this law, they are excluded from voting. I call for the ayes and noes on this motion.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion to reconsider, and it was declared lost by the following vote:

**Ayes**—Messrs. Barnard, Barto, Bergen, E. Brooks, E. A. Brown, Burrill, Cassidy, Champlain, Chesebro, Clinton, Colahan, Comstock, Conger, Corning, Daly, Garvin, Gerry, Greeley, Hale, Har-

denburgh, Hitchman, Kernan, Law, M. H. Lawrence, Livingston, Loew, Lowrey, Magee, Masten, Mattice, More, Morris, Paige, A. J. Parker, Potter, Rogers, Rolfe, Schell, Schoonmaker, Schumaker, Seymour, Strong, M. I. Townsend, M. & Townsend, Van Campen, Veeder, Verplanck, Weed, Wickham, Young—50.

**Noes**—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Baker, Ballard, Barker, Beadle, Beals, Beckwith, Bell, Bickford, Bowen, W. C. Brown, Carpenter, Case, Chertree, Cooke, Corbett, C. C. Dwight, T. W. Dwight Eddy, Endress, Evarts, Farnum, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Gould, Graves, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Huntington, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Pond, Prosser, Rathbun, Reynolds, Root, Rumsey, T. W. Russell, Seaver, Sheldon, Sherman, Spencer, Stratton, Van Cott, Wakeman, Wales, Williams—75.

**Mr. SHERMAN** offered the following resolution:

*Resolved*, That the article under consideration, with all pending questions relating thereto, be referred to the Committee of Revision, with instructions to report the article revised as to language, and corrected as to inconsistencies, if any exist therein, but without change of substantial provisions.

**Mr. RUMSEY** moved to amend the resolution by adding at the end thereof the following:

*Resolved*, That the committee of five to whom the article on the right of suffrage is referred, be instructed to insert at the end of the first section the following:

*“Provided*, That in time of war, no elector in the actual military service of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from the State.”

**Mr. RUMSEY**—The object of that amendment is simply to correct an incongruity in the article as it now stands. There is a provision in the third section, that the Legislature shall provide for the manner in which electors who are absent from home may vote. There is a proviso in the first section which says that no elector shall vote except in the district where he resides, and the resolution I have offered is simply to correct that incongruity, and make a provision that will allow soldiers to vote in time of war.

**Mr. SHERMAN**—The resolution I offered I think provides for that, for it provides that any inconsistencies existing in the article, the committee may correct. I do not say myself there is any inconsistency such as the gentleman speaks of, but if so, the committee can correct it.

**Mr. WAKEMAN**—If the Legislature provides for the absent voter, it provides that he votes in the district where he resides, and under the present Constitution as amended, the absent electors vote in the district where they reside and where they are registered; the Legislature provides that the vote may be deposited in a certain way, and conveyed by some person to be deposited in the district where he resides, so he in that way votes in the district where he belongs.

**Mr. RUMSEY**—If it is understood that is an

inconsistency, the committee may or may not amend, I withdraw my amendment.

Mr. E. BROOKS—I offer the following as an amendment to the resolution of the gentleman from Oneida [Mr. Sherman]:

That the report now under consideration, with all the provisions lying upon the table relating to the same, be committed to the select committee appointed on the 27th day of July, with instructions to report to the Convention in principle and substance, article second, section first of the Constitution of 1846, with the following amendments:

No property qualification for the right of suffrage or for eligibility to office, shall ever be required.

No person authorized to vote under the existing Constitution, shall be disfranchised, nor shall the right of suffrage be abridged or extended; *Provided, however,* That laws shall be passed by the first Legislatures assembled after the adoption of this Constitution, excluding from the right to vote all persons who may pay or receive money or any other thing of value, or promise any consideration, place or office, with the view of securing or preventing the election of any candidate for any Federal, State or local office, or who may be engaged in buying or selling votes, or in any way preventing the purity of the ballot or the freedom of elections.

Mr. CONGER—I move to amend the resolution of the gentleman from Oneida [Mr. Sherman] by adding at the end of it, "And with further instructions to amend the last clause of section four, so as to prevent the defeasance of a vote—"

The PRESIDENT *pro tem.*—The gentleman will please reduce his amendment to writing.

Mr. FERRY—I am opposed to the adoption of this resolution, unless some good reason can be shown for it, and unless the other motions to reconsider can be heard. I made one myself and I would like an opportunity to be heard, unless some good reason can be shown why we should stop with this imperfect review of this report.

The SECRETARY proceeded to read the amendment proposed by Mr. Conger, as follows:

"And with further instructions to amend the last clause of section four, so as to prevent the defeasance of votes on the failure to make a proper register, or in the event of its destruction before it is finished. And to add to section six the last clause of article twelve of the Constitution of 1846."

Mr. FERRY—Mr. President—

The PRESIDENT *pro tem.*—The gentleman has already spoken once.

Mr. FERRY—This is only part of my speech—

The PRESIDENT *pro tem.*—Then the gentleman has occupied his full time.

Mr. CONGER—In regard to the first of these propositions I wish very briefly to show its meaning—

Mr. CORBETT—I rise to a point of order. That the gentleman from Rockland [Mr. Conger] has already made a speech on offering the amendment and cannot make another one—

The PRESIDENT *pro tem.*—The Chair is of opinion it hardly amounted to a speech. [Laughter.]

Mr. C. C. DWIGHT—I would like to inquire how many times the gentleman from Rockland

[Mr. Conger] is at liberty to speak under the ruling of the Chair?

The PRESIDENT *pro tem.*—Only once.

Mr. CONGER—After these grave questions are settled, sir—

Mr. RATHBUN—I believe the gentleman from Rockland [Mr. Conger] has occupied the floor from the time he first rose, and has occupied his full time.

The PRESIDENT *pro tem.*—The gentleman from Rockland was putting his resolution in writing under the direction of the Chair. The gentleman from Rockland will now proceed and occupy his full time.

Mr. CONGER—When I drew the attention of the Convention this morning to what I believe to be a very great defect and a cardinal vice in this last clause of section four, the gentleman from Onondaga [Mr. Alvord] almost expressed his derision, by a palpable sneer at the view I had presented—

Mr. MERRILL—I rise to a point of order, that the last part of the amendment of the gentleman from Rockland [Mr. Conger] has been voted down.

The PRESIDENT *pro tem.*—The whole proposition of the gentleman from Rockland is now taken together.

Mr. CONGER—I wish to be advised if I did not correctly understand the Chair yesterday to say when this question was presented, when the question was asked, not formally but indirectly, of the Chair by a gentleman on my right, whether the effect of the last clause would not, in the event of the destruction of the registry list before it was perfected, exclude all persons from voting whose names were not on the list.

The PRESIDENT *pro tem.*—The Chair does not remember having given any such legal decision.

Mr. CONGER—In regard to the latter part of the resolution—that we shall instruct the committee—I deem it a matter of the gravest importance that the last section of article twelve of the Constitution of 1846 should be added, otherwise it will be in the power of the Legislature, in addition to the oath which has now been added to the ordinary official oath, to impose any form of oath, declaration or test that it may see fit to do, and it is in violation of a constitutional provision which has existed in the State since 1821, and in violation of the uniform practice of the people of the State since the adoption of its first Constitution in 1777. I look upon these as very great mischiefs; I may be in very great error, but I submit in all sincerity it is due by this Convention to the great body of the people to have these questions clearly and definitely stated.

Mr. HADLEY—I move that the Convention do now take a recess until four o'clock.

The question was put on the motion of Mr. Hadley, and it was declared lost.

The question was then put on the amendment of Mr. Conger, and it was declared lost.

Mr. KETCHAM offered the following resolution:

*Resolved,* That the Committee of Revision, to which is referred the subject of the elective franchise, be instructed to strike out the word "to," in line five of section four, and to insert in lieu thereof the words, "which in cities and incorpo-

petition of Charles Tracy and others, lawyers, of New York city, asking that all judges be appointed by the Governor, and hold office during good behavior.

Which was referred to the Committee on the Judiciary.

Mr. HUTCHINS presented the petition of G. B. Hoag and fifty others, asking for a provision in the Constitution prohibiting the Legislature from donating public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HUTCHINS also presented the petition of S. Kaufman and several hundred others, citizens of New York, in relation to the free school system.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HATCH presented the petition of C. C. Staubro, of Concord, R. F. Yates and others asking for a provision in the Constitution prohibiting the Legislature from donating money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GRAVES presented the petition of the Sons of Temperance against the sale of intoxicating liquors.

Which was referred to the Committee on Adulterated Liquors.

The PRESIDENT *pro tem.* presented a communication from the Superintendent of Public Instructions in answer to the resolution of inquiry introduced by Mr. Barto.

Which was laid on the table and ordered to be printed.

Mr. SHERMAN gave the following notice, that he would on some future day, move to suspend the third and twenty-first rules, so that it shall be in order for him, at the proper time, to move the adoption of the following resolution:

*Resolved,* That in order to facilitate action on the article reported by the "Committee on the Legislature, its Organization, etc.," the Committee of the Whole be directed to consider, before acting on the article by sections, the following general propositions, viz.:

1. Of what number shall the Senate consist.
2. Of what number shall the Assembly consist.
3. How many senate districts shall there be.
4. What shall be the term of Senators.
5. What the term of members of Assembly.
6. Shall members of Assembly be elected by counties or by single districts, or in what other manner.
7. Shall the apportionment of senate districts be made by the Convention or left to the Legislature.
8. Shall the apportionment of members of Assembly be made by the Convention or left to the Legislature.

Mr. HARRIS—I am instructed by the Committee on Cities to report back the resolution offered by Mr. Stratton, of New York, calling upon the Comptroller of the city of New York for information in relation to moneys received from various sources, and recommend its passage.

The SECRETARY proceeded to read the resolution as follows:

*Resolved,* That the Comptroller of the city of

New York be and he is hereby instructed to make full report to this Convention of the net sums annually received from the several sources herein enumerated and applied through the sinking fund for the redemption of the city debt, or to the payment of interest on the city debt during years from 1847 to 1866 inclusive, and a statement showing the expenses incurred in each of said years, in granting such licenses, collecting such fees, and in legal efforts to enforce payment or collect penalties for non-compliance to law or ordinance in each of such cases; whether such expenses were allowed by the mayor and common council of the city, or by the board of supervisors of the county, namely:

1. For licenses to pawnbrokers and to dealers in second-hand furniture, metals or clothes.
2. For licenses for hackney coaches and drivers.
3. For fees of market privileges and market rents.
4. For mayoralty fees.
5. For fines and penalties.
6. For fees and fines collected by clerks and courts.
7. For tavern and excise licenses.

The question was put on the resolution, and it was declared adopted.

Mr. FERRY, from the Committee on Contingent Expenses, submitted the following report:

Your committee to whom was referred the resolution of Mr. Conger, directing "the clerk to furnish to the reporters who have been admitted to the courtesies of the floor, the stationery necessary for them in the discharge of their functions as reporters, and that he report the amount and value, of such stationery, as severally distributed by him before the close of the sitting of this Convention," respectfully report: That they are opposed to the adoption of the resolution for reasons stated in a former report made to this body upon a similar resolution introduced by Mr. Tucker, and for the further reason that they regard the questions involved as settled by the deliberate action of this Convention, in adopting said report. This ought to be and must be the effect of such action provided both resolutions are substantially alike and your committee believe that the more orderly, if not the more respectful course would be, to move a reconsideration of the former vote if a change was desired by any member dissatisfied with it.

The first resolution—that of Mr. Tucker—authorized the granting of like stationery to the reporters, as had already been received by the members, to wit, \$30 each.

The last resolution directs the clerk to furnish them all *necessary* stationery, without limiting the amount thereof, and in this respect only does the last resolution essentially differ from the first. We regard this difference, however, as a highly objectionable feature in the last resolution. The lessons of the past have taught us that it is much safer and better to limit all appropriations of this character where there is nothing to interpose between the avarice of individuals and the public treasury but the discretion of an official, however worthy that official may be, and we regard this as so manifestly true that we occupy no time in attempting to prove



others, referred to in the Constitution of this State as "men of color" praying that no discrimination be made in the exercise of the elective franchise, based on any property qualification.

Which was laid on the table.

Mr. HITCHCOCK presented the petition of J. M. Mott and about sixty others of Fort Edward, Washington county, praying that an article be inserted in the Constitution prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. COCHRAN presented the petition of Rev. Benjamin C. Lippincott and 105 others, citizens of Rockland county, asking that a provision be inserted in the Constitution prohibiting the donations of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. L. W. RUSSELL presented the petition of Rev. L. C. Brown and others, citizens of Canton, on the same subject.

Which took the same reference.

Mr. L. W. RUSSELL also presented the petition of W. C. McDonald, and other citizens of Winfield, on the same subject.

Which took the same reference.

Mr. COOKE presented the petition of Isaac Tallman and thirty-eight others, citizens of Rockland county, on the same subject.

Which took the same reference.

Mr. VAN COTT presented the petition of Richard H. Chittenden and forty others, citizens of Brooklyn, on the same subject.

Which took the same reference.

Mr. VAN COTT also presented the petition of O. W. Thomas and one hundred and forty-two others, citizens of Westchester, on the same subject.

Which took the same reference.

Mr. McDONALD presented the petition of thirty-seven citizens of Ontario county, on the same subject.

Which took the same reference.

Mr. SMITH presented the petition of fifty-nine citizens of Fort Plain, on the same subject.

Which took the same reference.

Mr. PRINDLE presented the petition of E. L. Smith and thirteen others, of Sherburn, praying for a separate submission to the people of a proposition for prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. HUNTINGTON presented the petition of sundry citizens of Oneida and Oswego counties, asking for a provision in the Constitution prohibiting the Legislature from donating public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. TAPPEN presented the petition of George J. Means and twenty-seven others on the same subject.

Which took the same reference.

Mr. LOWREY presented the petition of John Vanderbilt, asking that section 6 of article 1 of the Constitution be amended, making it the duty of the court to see that just compensation is

made for private property taken for public uses.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. YOUNG presented the petition of J. Thompson, of New York city, and asked that the same be read.

The SECRETARY proceeded to read the petition, as follows:

Without stopping to elaborate a petition in due form, to your honorable body, I beg to recommend that the question of interest and the penalties for usury be taken into consideration by the Convention. In the National Currency Act, Congress has empowered the banks in this State (as our laws now stand) to take seven per cent interest, and has limited the penalty for usury to a forfeiture of the entire interest which the note, bill or other evidence of debt carries with it, or which has been agreed to be paid thereon. (See section 30, act of June 3d, 1864, commonly called the National Currency Act.) This forfeiture is so mild that the banks can take usury with impunity, they being amenable under the acts of Congress, and not under any State act.

The laws of our State are so unmercifully severe as regards usury that the borrower of money is often forced into bargains more disastrous than any rate of interest, even of one hundred per cent per annum. Our law forfeits the entire debt and cancels the obligation; no matter how ignorant and innocent the bona fide holder of a tainted obligation may be. (See sections 5 and 14, pages 182-3, second volume Revised Statutes.) And if the law is fully administered, the taking of usury is a misdemeanor, to be punished by fine and imprisonment. (See section 15, page 183, volume 2.) This State law governs in all cases both private and corporate, except at the banks whose powers, privileges and forfeitures are fixed and defined by act of Congress. I ask, first, is it wise to retain in the statutes, acts that no court has ever enforced, to wit, the fine and imprisonment for usury. Second, is it just to place the people and corporations of the State, at such disadvantage with the corporations whose powers are derived from Congress.

Very Respectfully,

J. THOMPSON.

The petition was referred to the Committee on Banking and Insurance.

Mr. RUMSEY presented the petition of 109 citizens of Orange, Schuyler county, asking for a provision in the Constitution prohibiting the Legislature from donating public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. SPENCER presented the petition of D. B. Winton and others on the same subject.

Which took the same reference.

Mr. M. I. TOWNSEND presented the petition of thirty-seven electors, on the same subject.

Which took the same reference.

The PRESIDENT *pro tem.* presented the petition of Isaac S. Hand and others, citizens of Brooklyn, on the same subject.

Which took the same reference.

The PRESIDENT *pro tem.* also presented the

sort, I hold that what is proposed is a proper courtesy and the discharge of a proper duty on the part of the Convention. I therefore hope the resolution submitted by the gentleman representing the minority will be adopted.

Mr. VEEDER — I desire to make this explanation. I had no desire at all to defeat the adoption of the report of the minority, but I submit that there are some things mentioned in the report of the majority that ought to be answered, and for the purpose of enabling us to examine the report carefully I desire it should be printed before we act upon it. If the Convention are ready now to act upon it I am perfectly willing myself to vote.

The question was put on the amendment of Mr. Mr. Van Campen and it was declared adopted.

Mr. E. BROOKS — If a motion were now made to reconsider the vote just taken could it be had at once?

The PRESIDENT *pro tem.* — It could not. It must lie on the table.

Mr. McDONALD — In regard to this vote, it seems to me, if we propose to pass upon the recommendation of the majority or receive and adopt the recommendations of the minority of the committee, we should do it by a reconsideration. We have already a similar resolution reported by this committee which refused to grant this amount, and as I understand the Convention they have refused to grant it simply on the ground that we have no power to give away any amount for such purpose. I admit, as any one else does, that the reporters deserve this amount if we had it to give, but I contend that we have no more right to give away the money of the State than we have to give away the money belonging to an individual. If the Convention is willing, I should be very glad to join with them in order to give this amount to the reporters. I do not think the gentleman from Richmond [Mr. E. Brooks] will claim that there is any authority in this Convention to give away this money as conferred by the law under which we are acting. I know the gentleman has cited the fact that we have given the papers a certain amount for publishing the debates of this Convention; that resolution or rather that decision may be authority for him, but as I was opposed to that decision it is no authority for me at all. If I remember aright, that resolution was passed by this Convention because a large majority of members thought that the Legislature had overlooked such a provision and regarded it as a matter of necessity — a matter of absolute necessity, and under that view they passed that resolution. But because we have taken one wrong step in that direction, it is no reason why we should take another. It does seem to me that the gentleman from Richmond [Mr. E. Brooks], in accepting the amendment of the gentleman from Cattaraugus [Mr. Van Campen], shows that he is desirous the appropriation should be limited. The resolution of that gentleman simply makes this the identical resolution which this Convention has already voted down, and which, as I have said before, was voted down simply for want of authority in this Convention. Relying upon this precedent, and believing that we have no more right to give away the money of the people of the State than we have to give

away the money of any individual, I am not willing to support this resolution, and hope that the report of the majority will be accepted instead of that of the minority.

Mr. CORBETT — Those who are in favor of the report of the minority are simply in favor of what is the usual practice in the State Legislature, and what they believe is fairly contemplated by the law convening this body. We have invited gentlemen here to report our proceedings, and I think it is not asking too much that we should give them the requisite ink and paper with which to perform the service. It is exceedingly fortunate that cheap economy has such a valiant champion as the gentleman from Ontario [Mr. McDonald]; but I look upon it as a very shabby piece of business to deny to the reporters of this Convention the necessary facilities to perform the duties we have imposed upon them. The people of this State are not misers, and they will sanction any expenditure that may be necessary to enable this Convention to successfully complete its labors. I trust, therefore, the Convention will adopt the minority report and thus be generous as well as just.

Mr. REYNOLDS — I am a member of the Contingent Expense Committee, and one of the majority of that committee that reported against making the appropriation contemplated by the resolution of the gentleman from New York [Mr. Tucker] which was referred to that committee. The Convention sustained that report. The resolution of the gentleman from Rockland [Mr. Conger] is identical in character with the one against which the committee had already reported. And as their action had been sustained by the Convention, they were justified in believing that their position in regard to this and all similar appropriations of the public money was in accordance with the sentiment of the Convention. Under these circumstances the Committee felt bound to report against the appropriation contemplated by the resolution of the gentleman from Rockland [Mr. Conger] — fully believing that there was no authority of law for it. Personally, I have no feeling in the matter, and if the Convention shall reverse its former decision, and now sustain the minority report, as an individual member of that committee I shall make no objection, though such action will not change my opinion as to the propriety of the course taken by the committee — and can but regard such action by the Convention as unfortunate as influencing its action in regard to similar appropriations in the future.

Mr. TAPPEN — I apprehend that the action of this body was an error upon the former occasion, which it is not proposed to repeat now. I believe to refuse this allowance would not be justice, but would be parsimonious, and would be great injustice to the number of gentlemen who are acting in official relations between this body and the people. We have the example of legislative bodies in awarding this mere pittance to gentlemen representing the public press, and these gentlemen who are here, are the telegraph between this body and the people of the State. I hold it to be an act of justice which this Convention will now perform in adopting the resolution as amended by the gentleman from Cattaraugus [Mr. Van Campen].

awarding the thirty dollars worth of stationery for these gentlemen who are faithfully attending this body, and go back upon what is called the former action of the Convention on this subject.

Mr. ALVORD — I happen to be one of the unfortunate class who voted against this proposition when it was up before, and it is almost in the same terms now as it was then, but fortunately at that time I was in the majority of the Convention, and I hope will still continue to be thus fortunate in the future. I hold there is no sort of question about the fact that we have no authority or right which would justify us in taking money from the public treasury for this purpose. It does not obtain, nor has it, as far as I understand, obtained in any legislative body other than the State of New York, within the limits of the United States of America, nor does it obtain in the Congress of the United States. These reporters, who are they? They are the reporters of the public press, who come here, not by our invitation, but who ask us the privilege, in the furtherance of the interests of their employers, to have a place upon this floor in order to report our proceedings and make their papers the more valuable in consequence of it. They are under the necessity of having public information and they are sent here for that purpose by their employers in the first instance, and not invited by us here to seats upon the floor for our convenience. Another thing, sir, I hold that it is neither miserly upon my part, and it is neither inconsistent upon my part to take this position. If it were a necessity, sir, that we should have these reporters here and could not get them here otherwise than by paying them thirty dollars worth of stationery, I would be willing to take the money out of my own pocket and give to these men to the amount of thirty dollars, in my proportion, in order to give them this stationery, but when I have it put directly before me in my face, that under the law which has convened us together, we have no right thus to dispose of the public money, and that the Comptroller of the State, in the performance of his duty, will refuse to pay any such amount out of the funds of the State appropriated for this Convention, and that it must of necessity be that if these men are furnished stationery upon the order of the Clerk, the men who furnish it will have to go to the next Legislature for an enabling act to get the money out of the Treasury to pay them, therefore, I am opposed to the whole matter. I therefore, with due deference to the Convention ask that the Chair shall decide that this question having been once determined in substance, if not in form, by the Convention, that it cannot be gotten up in the present shape of the amendment of the gentleman from Cattaraugus [Mr. Van Campen] by way of consideration. I make that point of order.

The PRESIDENT *pro tem.*—The Chair is not sufficiently familiar with the resolution to decide that the point of order is well taken. This question comes upon the report of the committee, and it has got to be disposed of.

Mr. ALVORD—If the Chair does not desire to decide that, I move that the whole matter be laid upon the table, and upon that motion I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put upon the motion of Mr. Alvord, and it was lost by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Armstrong, Baker, Ballard, Beadle, Bell, Bergen, Bickford, Bowen, E. P. Brooks, W. C. Brown, Case, Cheritree, Cooke, Farnum, Flagler, Folger, Gould, Graves, Hadley, Hammond, Hand, Hitchcock, Houston, Hutchins, Kernan, Ketcham, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Spencer, M. I. Townsend, Williams—52.

*Noes*—Messrs. Archer, Barker, Barnard, Barto, E. Brooks, Burrill, Carpenter, Cassidy, Champlain, Chesebro, Clark, Clinton, Cochran, Colahan, Comstock, Conger, Corbett, Corning, Daly, C. C. Dwight, T. W. Dwight, Evarts, Fowler, Fuller, Fullerton, Garvin, Gerry, Greeley, Hale, Hardenburgh, Harris, Hatch, Hitchman, Huntington, Kinney, Livingston, Loew, Lowrey, Magee, Matice, Merrill, Merwin, More, Morris, Opdyke, A. J. Parker, C. E. Parker, Potter, Robertson, A. D. Russell, Schoonmaker, Schumaker, Seymour, Sherman, Smith, Stratton, Strong, Tappen, S. Townsend, Van Campen, Van Cott, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham, Young—69.

Mr. CONGER—I suppose in the first place, Mr. President, that I should return my obligations to the majority of the committee, who have so generously accorded to me their verdict of honesty of conviction in regard to the resolution which I offered. I wish I could as honestly reciprocate the compliment as to their careful discrimination between the proposition which I submitted and the one which had been previously voted down by the Convention. I concede, in the first place, that we have no right under the law to grant the reporters of the Convention, for private use, an amount of stationery equal to that which many of us have received under the law, for use other than in the Convention chamber; which is limited to the amount of thirty dollars. But the purport of my resolution was to give the reporters of this Convention permission to receive from the clerk of this body a sufficient amount of stationery for the actual work in which they were engaged, while sitting here and enjoying the courtesy of this body. I suppose there can be no question whatever that every body constituted as this is, has sufficient control over its contingent expenses to regulate the manner in which the stationery which is in the hands of the clerk, may be distributed and used. Now I take it that there is an essential distinction between that view, and the position taken by the gentleman from Onondaga [Mr. Alvord]. If my resolution had been in substance the same as the original resolution, I should think it might be obnoxious to some censure as an attempt to reconsider a previous negative vote of the Convention, but if I can make the gentleman from Onondaga appreciate the distinction—

Mr. ALVORD observed that the amendment of the gentleman from Cattaraugus [Mr. Van Campen] made it the original proposition.



sort, I hold that what is proposed is a proper courtesy and the discharge of a proper duty on the part of the Convention. I therefore hope the resolution submitted by the gentleman representing the minority will be adopted.

Mr. VEEDER — I desire to make this explanation. I had no desire at all to defeat the adoption of the report of the minority, but I submit that there are some things mentioned in the report of the majority that ought to be answered, and for the purpose of enabling us to examine the report carefully I desire it should be printed before we act upon it. If the Convention are ready now to act upon it I am perfectly willing myself to vote.

The question was put on the amendment of Mr. Mr. Van Campen and it was declared adopted.

Mr. E. BROOKS — If a motion were now made to reconsider the vote just taken could it be had at once?

The PRESIDENT *pro tem.* — It could not. It must lie on the table.

Mr. McDONALD — In regard to this vote, it seems to me, if we propose to pass upon the recommendation of the majority or receive and adopt the recommendations of the minority of the committee, we should do it by a reconsideration. We have already a similar resolution reported by this committee which refused to grant this amount, and as I understand the Convention they have refused to grant it simply on the ground that we have no power to give away any amount for such purpose. I admit, as any one else does, that the reporters deserve this amount if we had it to give, but I contend that we have no more right to give away the money of the State than we have to give away the money belonging to an individual. If the Convention is willing, I should be very glad to join with them in order to give this amount to the reporters. I do not think the gentleman from Richmond [Mr. E. Brooks] will claim that there is any authority in this Convention to give away this money as conferred by the law under which we are acting. I know the gentleman has cited the fact that we have given the papers a certain amount for publishing the debates of this Convention; that resolution or rather that decision may be authority for him, but as I was opposed to that decision it is no authority for me at all. If I remember aright, that resolution was passed by this Convention because a large majority of members thought that the Legislature had overlooked such a provision and regarded it as a matter of necessity—a matter of absolute necessity, and under that view they passed that resolution. But because we have taken one wrong step in that direction, it is no reason why we should take another. It does seem to me that the gentleman from Richmond [Mr. E. Brooks], in accepting the amendment of the gentleman from Cattaraugus [Mr. Van Campen], shows that he is desirous the appropriation should be limited. The resolution of that gentleman simply makes this the identical resolution which this Convention has already voted down, and which, as I have said before, was voted down simply for want of authority in this Convention. Relying upon this precedent, and believing that we have no more right to give away the money of the people of the State than we have to give

away the money of any individual, I am not willing to support this resolution, and hope that the report of the majority will be accepted instead of that of the minority.

Mr. CORBETT — Those who are in favor of the report of the minority are simply in favor of what is the usual practice in the State Legislature, and what they believe is fairly contemplated by the law convening this body. We have invited gentlemen here to report our proceedings, and I think it is not asking too much that we should give them the requisite ink and paper with which to perform the service. It is exceedingly fortunate that cheap economy has such a valiant champion as the gentleman from Ontario [Mr. McDonald]; but I look upon it as a very shabby piece of business to deny to the reporters of this Convention the necessary facilities to perform the duties we have imposed upon them. The people of this State are not misers, and they will sanction any expenditure that may be necessary to enable this Convention to successfully complete its labors. I trust, therefore, the Convention will adopt the minority report and thus be generous as well as just.

Mr. REYNOLDS — I am a member of the Contingent Expense Committee, and one of the majority of that committee that reported against making the appropriation contemplated by the resolution of the gentleman from New York [Mr. Tucker] which was referred to that committee. The Convention sustained that report. The resolution of the gentleman from Rockland [Mr. Conger] is identical in character with the one against which the committee had already reported. And as their action had been sustained by the Convention, they were justified in believing that their position in regard to this and all similar appropriations of the public money was in accordance with the sentiment of the Convention. Under these circumstances the Committee felt bound to report against the appropriation contemplated by the resolution of the gentleman from Rockland [Mr. Conger]—fully believing that there was no authority of law for it. Personally, I have no feeling in the matter, and if the Convention shall reverse its former decision, and now sustain the minority report, as an individual member of that committee I shall make no objection, though such action will not change my opinion as to the propriety of the course taken by the committee—and can but regard such action by the Convention as unfortunate as influencing its action in regard to similar appropriations in the future.

Mr. TAPPEN — I apprehend that the action of this body was an error upon the former occasion, which it is not proposed to repeat now. I believe to refuse this allowance would not be justice, but would be parsimonious, and would be great injustice to the number of gentlemen who are acting in official relations between this body and the people. We have the example of legislative bodies in awarding this mere pittance to gentlemen representing the public press, and these gentlemen who are here, are the telegraph between this body and the people of the State. I hold it to be an act of justice which this Convention will now perform in adopting the resolution as amended by the gentleman from Cattaraugus [Mr. Van Campen].

except that we can control and shove them out of the door. It is a simple, plain question, and the authority is here demonstrated in the minority report for expending four hundred and fifty dollars for this purpose. We have spent twice that amount of money in discussing it.

Mr. FERRY—The committee to whom this matter was intrusted attempted to treat it fairly. They felt the duty imposed upon them of doing what was right. They felt, also, it was more agreeable to grant favors to applicants whom they regarded favorably than to withhold them. They discussed this question, as they thought, fairly. In their former report they considered the question of power and they came to the conclusion, for reasons they have spread before this Convention, and which they thought demonstrated that this Convention had no power to grant it. The act to which the gentleman from Clinton [Mr. Weed] refers, in my judgment excludes all except members and officers by its terms. It says members and officers shall be furnished with stationery, and then "the Convention" is to be furnished with stationery. Unless he claims these reporters or officers I cannot understand why he can say by the act that they should be furnished with stationery. This committee considered the question whether they owed a debt to these men, and in what attitude they were placed in this Convention, and they, I believe, treated the reporters with a good deal of respect; they had no reason to do otherwise. They came to the conclusion that they owed no debt to these men, that they were on the floor by the courtesy of the Convention, that they were in the service of their employers, the proprietors of the various papers throughout the State, performing a very laudable business but which was not necessary for the purposes of this Convention. They next considered the question whether they had any power to make a donation, and they came to the conclusion they had not. These facts were spread before the Convention. It is true some remarks that were considered rather sharp were introduced in the report, but there was no intention to give offense to any one; and with a most respectful consideration for every one, they introduced what they did in their report. I took occasion to go to some of the gentlemen who thought there was an affront in the report and I asked them to carefully read it and see whether it could bear any such construction as it was said they put upon it. I do not yield to any man in obedience to the claims of friendship. It would have been much more gratifying to me, if I had been at liberty, to grant this favor to these reporters, some of whom I have known and esteemed for years. But I have felt constrained by the promptings of duty to take part in such a report as this committee have given. The reasons for that report were given to this Convention. They deliberately acted upon it and sustained it by a large majority. Immediately upon that vote being announced the gentleman from Rockland [Mr. Conger] arose and offered this resolution now pending. I first supposed it was offered under a misapprehension of the vote; but in a comparison of the two there is just this difference, that the resolution of the gentleman from

Rockland does not undertake to limit the amount which the Secretary shall furnish. The committee came to the conclusion that was an objectionable feature, so far as the two differed, and they differed in no essential respect except in that one particular. The committee say they are of the opinion that they formerly held, and for that reason they are unwilling to change their action. They do not feel willing to authorize the granting of a donation for the reasons they have already stated. In addition, they considered the question decided in the Convention by its action on the former report. Now, that is what they say, and for that reason I ask that this resolution of the minority be not adopted. The committee will bear me out in saying that the position in which the committee or its members have been placed has been a rather unpleasant one. They have provoked hostile articles from one of the newspapers of this city, censuring the members of this committee, and particularly its chairman, and censuring also members of the Convention. I hope that this Convention, under the circumstances, will stand by the report of this committee. If it should not; if there is to be a retraction entirely, even without a reconsideration, if the Convention retraces its steps and adopt the minority report, I confess I shall have but little heart in attempting to discharge my duties as a member of the Committee on Contingent Expenses. I do not wish to receive abuse from outsiders for my conduct simply for doing what I feel to be my duty. As I said before, I know the claims of men who ask favors of me, and I am sorry to receive abuse from anybody for my conduct in the honest discharge of my duty.

Mr. MORRIS—I desire to say in this connection that several of the reporters here have made a request to me that I would state to the members of the Convention that they have no desire to receive this stationery. It is a source of embarrassment to them that this subject has occupied so much of the time of the Convention. To use the argument of the distinguished gentleman from Westchester [Mr. Greeley] who said that the committee did not favor the extension of the franchise to women because they did not want it, I think the best way to settle the matter is to decline to give the stationery to these gentlemen because they have not asked it.

Mr. BAKER—If it is in order I will offer an amendment which I suppose will accommodate all parties in this Convention. It is a sort of compromise. After the word "*Resolved*" insert as follows: "That each reporter be paid the amount necessary for stationery out of the per diem allowance of the members of this Convention." [Laughter.]

The question was put on the amendment of Mr. Baker and it was declared carried. [Laughter.]

Mr. WEED—I wish to offer an amendment to make it *pro rata*.

Mr. BELL—I protest against this. I do not think the subject should be treated with this trifling. I think the reporters have some rights in this matter. If the amount is to be denied, as I presume it will be, let it be denied at once; but let no subterfuge be resorted to.

Mr. CONGER—I did not so understand the effect of the amendment, because it does not set aside any portion of the resolution which I offered, but only limits the amount in value up to which a supply may be granted. Now, if this resolution was designed to give the reporters authority for a draft on the Comptroller for thirty dollars, by which they could purchase their own stationery. I should say then that the whole proposition came within the law and should be voted down—

Mr. VAN CAMPEN—I desire to call the attention of the gentleman [Mr. Conger], to the fact that the amendment merely limits the amount of the allowance for stationery.

Mr. CONGER—I understand that fully, therefore I think the proposition as amended by the gentleman from Cattaraugus [Mr. Van Campen] does not come fairly within the censure of the gentleman from Onondaga [Mr. Alvord]. The Secretary is to distribute a certain amount of stationery, and he is to report that amount at the close of the Convention.

Mr. ALVORD—Then I understand the gentleman makes a distinction whether the Secretary puts his hand into the treasury and gets it, or whether the reporter does.

Mr. CONGER—Not at all. If we have any rights as a parliamentary body, we have a right to a certain amount of stationery for the use of this Convention and for the clerical force which we employ, either directly or indirectly. I consider it no evasion of law to authorize the Secretary to give reporters the amount of stationery which they need. How is it in the case of him who is here the special reporter of this Convention? Do we not furnish him his stationery? Is he limited to the amount of thirty dollars? Does it not come out of the contingent expenses of this Convention, which are amply sufficient to cover the stationery that is needed? But I will not undertake to argue the question any further. It seems to me it is clear and distinct, and hardly needs elucidation.

Mr. C. L. ALLEN—I hope the Convention on this occasion will preserve some consistency. We voted a few days ago that we had no power to make an appropriation of this character, and we sustained the report of this committee, on this very point we are now discussing. That committee, I have no doubt, felt themselves instructed by the previous vote which we had given, to make the report they did. They would have felt as if they were reporting against the express decision of the Convention on the point submitted to them previously to this time if they had reported differently. Now, what do we do? Instead of reconsidering the vote on the former day, which, if it was incorrect would be proper for us to do, we vote now to sustain the report of the minority against the report of the majority of this committee, giving the majority a rebuke for obeying us in a previous vote on the same question. I hope we will preserve some consistency, and refuse to adopt the report of the minority.

Mr. WEED—A word with reference to the power of this Convention to make this order for stationery, but before I read from the statute I will simply say in answer to the gentleman who has just taken his seat, that if we rebuke the

committee once it would be only an offset to one of the two rebukes they have given us in this Convention. They certainly went out of the way in their first report to rebuke the Convention for the vote taken in Convention some days before, and they now not only rebuke the Convention, but most severely rebuke the gentleman who introduced the resolution. I do not look upon our action here as a rebuke to the committee at all. I look upon it in the light in which the gentleman from Monroe [Mr. Reynolds] puts it. He says they felt as though the action of this Convention should induce them to make the report they did, and they made it because of that action. The Convention here have thought upon it. The other vote was taken without much thought or discussion. If the Convention see fit to change their action it will be no rebuke to this committee. They have done their duty by having adhered to the action of the Convention. Now it seems to me that the facts set forth in the minority report have been entirely overlooked. That report refers to the third section of the act under which this Convention is organized, and in that section the following words are used:

“And it shall be the duty of the Comptroller to furnish the members thereof” (of the Convention) “with stationery to the amount provided by law for the Legislature while in session, and to the Convention such stationery and file-boards, and other like things as are furnished to the two Houses of the Legislature.”

Now, there is an express provision to furnish the members of this Convention with such stationery as is provided by law to the Legislature. What can it mean except the employees and attaches of this Convention? As the minority report justly says, these reporters are a part of the Convention; they have a place on the floor; they are appointed by the President. We have the express power with these last words to furnish the stationery if we see fit. Now, let us walk right up, either one way or the other; do not put it on the want of power, for it is in the law. If we think these reporters ought not to have thirty dollars apiece for stationery, let us vote down this appropriation of four hundred and fifty dollars and get rid of this matter.

Mr. McDONALD—Does the gentleman claim that every person allowed the liberty of this floor is a part of this Convention?

Mr. WEED—As usual, the interrogatory of the gentleman has no bearing on the question at issue. I claim the reporters stand, in this respect, in the same position that the clerks stand. They are persons amenable to the laws of this Convention; they can be punished for breaches of faith, on the floor; they can be controlled in the Convention.

Mr. McDONALD—Are all persons admitted to the privileges of this floor under the control of the Convention?

Mr. WEED—In one sense they are, in another they are not.

Mr. McDONALD—In what sense are they controlled?

Mr. WEED—They are controlled in no sense,



much as it is in the power of the majority to do next week precisely what was done to-day, that is, either limit the discussion to five minutes upon any question or to ten minutes, or a smaller number of minutes, if there is any disposition to abuse the time, they will resort to rules like this rather than the previous question, which is now proposed.

Mr. ALVORD—I would ask the gentleman who has last addressed us in Convention what is the practical operation, as we have seen it for the past few days, of this five-minute rule? Under this rule two persons have spoken upon each side five minutes upon each amendment piled upon amendment, with hardly a variation in language and none in the sense of the various amendments. We have been now three days on the one single subject, the question of suffrage, under that five-minute rule. Another thing, sir; the gentleman [Mr. E. Brooks] says it is in the power of the Convention to control this matter as we have controlled it to-day. Thanks to the resolution originally introduced by him, although somewhat altered by the consent of the Convention by the gentleman from Oneida [Mr. Sherman], we finally have been relieved from this five-minute rule of endless debate on never ending amendments. We want this previous question for what? To avoid the necessity of entering into an interminable debate when the subject in the report of the Committee on Revision shall come again before us, which would be caused by opening the whole question, and permitting amendments upon amendments to be piled up mountain high until the time of the Convention expires. The practical operation of these subterfuges is to take out of the power of this Convention the right to say how far the debate shall go in this matter. Now, where the debate shall open legitimately, where it is proper to the subject under consideration, I doubt whether any man would take the responsibility, either as one of the majority or alone, to press upon the members of this Convention the previous question. It is only for the purpose, when the time shall come, in the estimation of all the members of the Convention, that enough has been said on the subject, that the previous question will, in my opinion, be used for the purpose of bringing the Convention to its bearings and its duty. Another thing, sir; it has got to have the support of the majority of the Convention at each time when the call is made for the previous question. Another thing sir; in the way in which we have been proceeding for the last six weeks or two months in this Convention, we shall have a previous question from the people ringing in our ears on the first day of next November, if we get there. We cannot get by it, and we shall find the previous question cutting us off in the very middle of the debate; when we shall have left remaining at the close of our labors, some nine or ten of the twenty articles to be considered by the Convention. It is for this reason (I here state for myself positively, as far as I am individually concerned as one of the majority) that there is no desire or design to use wrongfully this power which should reside in every legislative body. I hope and trust that the good sense of the entire of this

Convention, without distinction of party, will be in favor of passing the rule that we all confess should have been passed when the rules were originally brought before us for our consideration.

Mr. WEED—I do not care to go into discussion about the alteration of the five-minute rule or any other rule; but if the members of this Convention who desire to arrive at a proper conclusion upon the several matters which we have to discuss, will but for a moment think and not allow themselves to be led off by their passion, one way or the other, or by the abuses that may have been practiced during the discussion of the last three weeks, they will see the previous question, in the manner moved by the gentleman from Ontario [Mr. Lapham], is not what they want or what any man upon this floor wants, the majority as well as the minority; and that they can afford to have it. If the Convention will bear with me for a moment, I will attempt to show them why. It is admitted on all sides that the previous question is to cut off improper and unreasonable debate and that is all it should be used for. Now we get a report from the Canal Committee or any other committee of twenty sections of vital importance to the State, and the first section comes up and is discussed for four days or four weeks, and the chairman of that committee without an opportunity to discuss the residue of that report in any way, or without an opportunity to suggest an amendment; without an opportunity for the majority or minority to bring it before the Convention—I say that the chairman of that committee, and perhaps the Convention itself, getting disgusted with the manner in which the debate has progressed on that question, moves the previous question. What does it do? It goes to the whole report, and no amendment, no suggestion, no change, no correction can be made in the report after you have ordered the previous question upon the first section. I ask if there is a man on this floor who wants the previous question under such circumstances; and yet the gentleman from Onondaga [Mr. Alvord], knowing as well as any man in this Convention the working of such a rule, sees in a moment where it will lead them, as all who will think must see it. Mr. President, I am willing that a rule for the previous question, limited in its application, should be passed; I am willing a previous question should be passed that will cut off debate on all these little resolutions, to do away with all the annoyances we have here and upon which the great bulk of our time has been taken. I am willing the previous question should be passed to reach such cases; but when you come to the discussion of articles to be embodied in the Constitution, you do not want a previous question, and no gentleman on this floor can say it is necessary after the rules we have adopted and under the rulings of the Chair on the several motions made on the discussion of the suffrage question.

Mr. ALVORD—Will the gentleman permit me to ask him a question?

Mr. WEED—Certainly.

Mr. ALVORD—I ask him whether he supposes this previous question applies to the Committee of the Whole?

Mr. WEED—No, sir.

constituency, and allow them to return here a new member. I am satisfied, for one, that the people desire a full and elaborate discussion upon all subjects of importance that may be presented to this Convention. The people do not desire when an important subject is presented here that its ventilation and discussion should be cut off by the previous question. My experience has been that the most obnoxious measures, and the most obnoxious provisions that ever have been enacted by the Legislature of this State, were enacted under the operation of the previous question. Propositions were presented to the Legislature to which there was strong opposition, but the excuse was given that time was valuable, the end of the session was approaching, and that it was necessary to move the previous question, and the bill would be run through with scarce a single member knowing anything about its provisions.

Mr. MERRITT—Will the gentleman allow me to ask him whether any bad result would grow out of such legislation, in case the legislation were to be submitted to the people for their review and decision?

Mr. VEEDER—That is very well, so far as the final verdict on a proposition is concerned. But, in order to enable the people to vote intelligently on a proposition, we should present it to them with the discussions which have been had on that subject. For this purpose, I am opposed to the introduction of a rule incorporating the previous question stifling debate.

Mr. GREELEY—The question must always be considered whether there is time to do what is demanded on one side or the other. We have been two months, nearly, in session, and we have almost passed one article. We have twenty articles, at least, yet to act upon; and some of them present very grave and profound questions. Now, then, I am willing to stay here so long as is consistent with the higher right of the people to have these questions discussed before them in their town halls, their meeting-houses and their school-houses, as they will desire them discussed before they pass upon this Constitution. There are now, from this time to the election, three months—August, September, October. I am willing to divide the time, and let the Convention take half of it and the people have the other half. I think they will need that much, and are entitled to it. If we can get through in six weeks—which is certainly all we ought to take, after spending two months of this time—if we can get through within that time, and let the people have the rest, very well: I shall be willing to let debate run on interminably. But, believing that it is urgently, predominantly necessary that there shall be ample time to discuss the merits and demerits of this Constitution before that high court of appeals, the people, I insist that we shall so shape our rules, and so gauge our time and our labors, as to finish our work here, at the very farthest, by the middle of September. I believe this can only be done under very stringent rules. After what has been seen and heard here of the disposition to debate, I will support and vote for the demand for the previous question.

Mr. E. BROOKS—We have seen this morning

in our deliberations what a Convention can do when it is disposed to suppress debate. We met here this morning with, I think, some twenty-two propositions on the table, upon every one of which the gentlemen who introduced them could have called the ayes and noes. Upon every one of them speeches of five minutes' length could be made; but by a simple resolution suggested by myself, and modified on the motion of the gentleman from Oneida [Mr. Sherman] the whole business was swept from the table in the space of some two hours, and could have been swept away in a much less space of time—and all this in the absence of the previous question. Now, the main objection to the previous question is this; not that it cuts off debate, but that it prevents any gentlemen upon either side of this body introducing any amendment upon any subject, however important it may be. I think if we are to have a previous question it ought to be modified in that respect so as to allow gentlemen to submit propositions, and let them be voted upon that we may present in the proper way our views, and be enabled to make any argument upon them. There is a great deal of exaggeration in what has been said in regard to the deliberations of this body. We have not been here two months. Of all the time we have been here between to-day and the 4th of June, we have been absent a great many days, either for our own comfort and convenience or for the necessary recreation incident to a summer session. The great amount of time we have occupied has been in the committee-rooms. More hours have been occupied there than in this room; and the result of the deliberations in the committee-rooms will be very soon introduced in the reports to this body. Sir, instead of being six weeks in discussing the question of suffrage, let me say to my friend on the other side that we commenced the consideration of this subject only three weeks ago last Tuesday, and that some five or six days of that time have been occupied in the consideration of other questions.

Mr. LAPHAM—Does the gentleman approve or disapprove of the article in a daily paper of this morning in which the majority of this Convention was charged with wasting the time of the Convention thus far in useless discussions?

Mr. E. BROOKS—My answer to that is I have not seen any such article, have not read it, and am not, therefore, prepared to give any opinion upon it. But I am prepared to say in reply to the gentleman who puts the question to me, that if he will take the reports of this Convention day by day, and man by man, it will be found upon an examination that the majority of this body have occupied very much more time than the minority—and time altogether out of proportion even to their relative majority over the minority. That is quite apparent I think. But I regret the gentleman has introduced any such question as that—a question which I have no desire to enter upon. What I said the other day was in sincerity and truth. It is the very best possible thing for the constituents who sent me here, and for the great body of the people of the State. I desire that everything shall be done decently, and in order—not to abuse discussion on the one side, nor to abridge it on the other. I hope, therefore, inas-

much as it is in the power of the majority to do next week precisely what was done to-day, that is, either limit the discussion to five minutes upon any question or to ten minutes, or a smaller number of minutes, if there is any disposition to abuse the time, they will resort to rules like this rather than the previous question, which is now proposed.

Mr. ALVORD—I would ask the gentleman who has last addressed us in Convention what is the practical operation, as we have seen it for the past few days, of this five-minute rule? Under this rule two persons have spoken upon each side five minutes upon each amendment piled upon amendment, with hardly a variation in language and none in the sense of the various amendments. We have been now three days on the one single subject, the question of suffrage, under that five-minute rule. Another thing, sir; the gentleman [Mr. E. Brooks] says it is in the power of the Convention to control this matter as we have controlled it to-day. Thanks to the resolution originally introduced by him, although somewhat altered by the consent of the Convention by the gentleman from Oneida [Mr. Sherman], we finally have been relieved from this five-minute rule of endless debate on never ending amendments. We want this previous question for what? To avoid the necessity of entering into an interminable debate when the subject in the report of the Committee on Revision shall come again before us, which would be caused by opening the whole question, and permitting amendments upon amendments to be piled up mountain high until the time of the Convention expires. The practical operation of these subterfuges is to take out of the power of this Convention the right to say how far the debate shall go in this matter. Now, where the debate shall open legitimately, where it is proper to the subject under consideration, I doubt whether any man would take the responsibility, either as one of the majority or alone, to press upon the members of this Convention the previous question. It is only for the purpose, when the time shall come, in the estimation of all the members of the Convention, that enough has been said on the subject, that the previous question will, in my opinion, be used for the purpose of bringing the Convention to its bearings and its duty. Another thing, sir; it has got to have the support of the majority of the Convention at each time when the call is made for the previous question. Another thing sir; in the way in which we have been proceeding for the last six weeks or two months in this Convention, we shall have a previous question from the people ringing in our ears on the first day of next November, if we get there. We cannot get by it, and we shall find the previous question cutting us off in the very middle of the debate; when we shall have left remaining at the close of our labors, some nine or ten of the twenty articles to be considered by the Convention. It is for this reason (I here state for myself positively, as far as I am individually concerned as one of the majority) that there is no desire or design to use wrongfully this power which should reside in every legislative body. I hope and trust that the good sense of the entire of this

Convention, without distinction of party, will be in favor of passing the rule that we all confess should have been passed when the rules were originally brought before us for our consideration.

Mr. WEED—I do not care to go into discussion about the alteration of the five-minute rule or any other rule; but if the members of this Convention who desire to arrive at a proper conclusion upon the several matters which we have to discuss, will but for a moment think and not allow themselves to be led off by their passion, one way or the other, or by the abuses that may have been practiced during the discussion of the last three weeks, they will see the previous question, in the manner moved by the gentleman from Ontario [Mr. Lapham], is not what they want or what any man upon this floor wants, the majority as well as the minority; and that they can afford to have it. If the Convention will bear with me for a moment, I will attempt to show them why. It is admitted on all sides that the previous question is to cut off improper and unreasonable debate and that is all it should be used for. Now we get a report from the Canal Committee or any other committee of twenty sections of vital importance to the State, and the first section comes up and is discussed for four days or four weeks, and the chairman of that committee without an opportunity to discuss the residue of that report in any way, or without an opportunity to suggest an amendment; without an opportunity for the majority or minority to bring it before the Convention—I say that the chairman of that committee, and perhaps the Convention itself, getting disgusted with the manner in which the debate has progressed on that question, moves the previous question. What does it do? It goes to the whole report, and no amendment, no suggestion, no change, no correction can be made in the report after you have ordered the previous question upon the first section. I ask if there is a man on this floor who wants the previous question under such circumstances; and yet the gentleman from Onondaga [Mr. Alvord], knowing as well as any man in this Convention the working of such a rule, sees in a moment where it will lead them, as all who will think must see it. Mr. President, I am willing that a rule for the previous question, limited in its application, should be passed; I am willing a previous question should be passed that will cut off debate on all these little resolutions, to do away with all the annoyances we have here and upon which the great bulk of our time has been taken. I am willing the previous question should be passed to reach such cases; but when you come to the discussion of articles to be embodied in the Constitution, you do not want a previous question, and no gentleman on this floor can say it is necessary after the rules we have adopted and under the rulings of the Chair on the several motions made on the discussion of the suffrage question.

Mr. ALVORD—Will the gentleman permit me to ask him a question?

Mr. WEED—Certainly.

Mr. ALVORD—I ask him whether he supposes this previous question applies to the Committee of the Whole?

Mr. WEED—No, sir.



**Mr. ALVORD**—Then there is certainly every opportunity for a full discussion.

**Mr. WEED**—I do not think it applies to the Committee of the Whole. Still it may, for there is now no provision that it shall not, and there is a rule that all rules of the Convention shall apply to the Committee of the Whole. But I understand exactly the trouble in the Committee of the Whole. It is but another step in that direction the gentleman must see. He knows we did not discuss a single section of the report of the Suffrage Committee in the Committee of the Whole, except the first. He knows the whole delay was upon the first section in the Committee of the Whole, and we had to come into Convention on the five minute rule to discuss the rest of it. You may be tired with all the discussion in the Committee of the Whole on the first section, and then report to the Convention, and the discussion upon it comes up, and before the discussion is exhausted you have to apply the rule of the previous question to the first section, and thus you have no opportunity to perfect the other sections. Now I suggest this is an amendment (and it seems to me to be the simplest way to expedite business), that this rule be passed applying it to everything except articles or sections of the Constitution. Then, when an article or section of the Constitution is under discussion, any gentleman upon the floor of this Convention can move to take the vote upon this question in one hour, in two hours or in twenty-four hours from that time without discussion, and he can sweep the five minute rule off entirely, and can move we take the vote without discussion, and fix the time so that all the members of this body will know when a vote is to be taken on the sections of the proposed Constitution which are important, and obviate the whole difficulty. I offer, therefore, this as an amendment: add the following:

"But such previous question shall not apply to the discussion of articles or sections of the proposed Constitution."

This will leave the previous question to apply to everything except articles and sections proposed for the Constitution, and then, under the rule we now have, whenever the debate has sufficiently progressed on a particular section, some gentleman can move that a vote be taken at a certain hour, and upon all the propositions without debate, and you have a perfect previous question, or what is better, you have something under which you can consider the different propositions under consideration, and, if need be, consider them without debate.

**Mr. VEEDER**—I rise to a point of order. The motion made by the gentleman from Ontario [Mr. Lapham] was to reconsider the vote on the rejection of a certain rule. By examining the Journal, it will be seen that the rule he sets forth is not the rule which was rejected by the Convention. I call the attention of the President to page 244 of the document, where Mr. Lapham gave notice of a motion to reconsider the vote, by which the following rule was rejected, and the Journal goes on to state what that rule was. Then I call the attention of the President to page 39 of the Journal and to rule 29, and I submit that no such rule

as is referred to by the motion of the honorable gentleman [Mr. Lapham] was ever voted upon by the Convention. The rule there discussed and voted upon was this:

"The previous question shall be, '*shall the main question be now put?*' and if determined in the affirmative, no further debate or amendment shall be in order, and the main question shall be on the passage of the resolution or other matter under consideration; but when amendments shall be pending, the question shall be first taken on the amendments in their order, and when amendments shall have been recommended by the Committee of the Whole, and not acted on by the Convention, the question shall be taken upon such amendments in like order."

The gentleman refers to a rule of this kind:

"The previous question shall be, '*shall the main question be now put?*' and it shall be discussed without debate."

No such rule was ever proposed by the committee. Nowhere did the Committee on Rules report such a rule, that when the previous question was moved the motion should be decided without debate; but it is a rule simple and plain upon its face.

The **PRESIDENT pro tem.**—The Chair decides the point of order is not well taken, for it holds that no member of the Convention could be deceived by that mere difference in verbiage.

**Mr. VEEDER**—I respectfully submit that it is a very important proposition, the question whether a motion for a previous question shall be discussed without debate or not. That never was in the rule.

The **PRESIDENT pro tem.**—That is susceptible of amendment. The point of order raised by the gentleman from Kings [Mr. Veeder] was that the motion to reconsider made by the gentleman from Ontario [Mr. Lapham] was a rule differing in phraseology from the one proposed.

**Mr. VEEDER**—It is a different rule from that reported by the committee.

The **PRESIDENT pro tem.**—The Chair rules there was no deception in that matter, for it was a mere difference in the verbiage.

**Mr. VEEDER**—Will the Chair allow me a moment? Under rule 29, as reported by the Committee on Rules, they made no provision prohibiting debate on a motion for the previous question.

The **PRESIDENT pro tem.**—The Chair rules that rule 29, as reported by the committee is before the Convention now under the motion to reconsider, which motion has been carried.

**Mr. LAPHAM**—Allow me to suggest that a complete answer to the point of order raised by the gentleman from Kings [Mr. Veeder] is to be found in the fact that the Convention have reconsidered the vote by which rule 29 was adopted, and that the subject is now before the Convention.

The **PRESIDENT pro tem.**—The point of order has been ruled on.

**Mr. GERRY**—I desire, sir, simply to call the attention of the Convention to the amendment offered by the gentleman from Clinton [Mr. Weed], and to say in reference to that, that if he will modify it in such a way as to cause it to read

"such resolutions shall not apply to the Committee of the Whole," I will accept it. It was an amendment to my amendment as I understand it.

The SECRETARY proceeded to read the amendment of Mr. Weed as follows:

"But such previous question shall not apply to articles or sections of the proposed Constitution."

Mr. RUMSEY—I propose to add to the amendment of the gentleman from Clinton [Mr. Weed], "in Committee of the Whole," so—

The PRESIDENT *pro tem.*—The Chair will inform the gentleman, [Mr. Rumsey] that two amendments are already pending.

The question was then put upon the amendment of Mr. Weed, and it was declared lost.

Mr. WEED—As the Convention has voted down the amendment which I offered, I now propose to offer an amendment which I believe to be the next best thing, and I may say in offering this amendment, that I have no desire to protract the debate upon any question in this body, and have just as much desire as the gentleman from Onondaga, [Mr. Alvord], or any other gentleman to get at the particular matters before us and discuss them as quick as they can be decided understandingly. I propose to add at the end of the proposed rule the following, so that when the previous question is ordered it may not take with it the whole article under consideration and not give an opportunity to amend the residue of the article or section under consideration at all:

"But such previous question shall only carry the vote to the resolution, paragraph or section, then pending, or to the amendments then pending to such paragraph or section."

The question was put on the amendment of Mr. Weed, and, on a division, it was declared lost, by a vote of 51 to 59.

The PRESIDENT *pro tem.* then announced the pending question to be on the amendment offered by Mr. Gerry.

Mr. GERRY—My reason for offering this amendment as a substitute for the original rule as reported by the select Committee on Rules, was because I supposed, from the almost unanimous decision of the Convention just made to reconsider the vote by which the rule when first reported was discarded, that it was the intention of the Convention, or at least of a majority of its members, in reconsidering such rule, to adopt it hereafter for all practical purposes. Allow me to say a few words in support of the amendment which I have offered. This is a substitute for the previous question. Referring to the standard work on parliamentary law, Jefferson's Manual, section 34, I find the reasons there given for the adoption of the previous question to be as follows:

"The proper occasion for the previous question is, when a subject is brought forward of a delicate nature as to high personages, etc., or the discussion of which may call forth observations, which might be of injurious consequences. Then the previous question is proposed, and, in the modern usage, the discussion of the main question is suspended, and the debate confined to the previous question. The use of it has been extended abusively to other cases: but in these, it is an embarrassing procedure; its uses would be

as well answered by other more simple parliamentary forms, and, therefore, it should not be favored, but restricted within as narrow limits as possible."

Now, sir, if it were possible to "answer the use of it" in the present Convention by more simple parliamentary forms; if a substitute for it would be as effective, but less obnoxious than the rule as already reported here, I see no reason why this should not be done; and I desire to call the attention of the Convention to one or two facts connected with the effect of the substitute I have just offered. In the first place it is practically in effect now. It has been already acted upon once during the past two weeks in the limitation of time, in the discussion of the suffrage question and the reason it did not then prevail effectually to stop unnecessary speeches, was because the form of the resolution then adopted was not sufficiently stringent to enable it to be effectual. In the next place, by the terms of this amendment there is no deprivation of the power of the Convention at any time to limit specifically the debate on any particular question which may come up before it for discussion, but it may, in its judgment, as it shall see fit, so regulate and so gauge this question that each particular proposition shall have its due time for discussion before this body. Again, by the proviso, that the resolution limiting the time it shall be deemed a privileged question, and shall be decided without debate, all unnecessary discussion of the amount of time to be appropriated to any particular question is entirely done away with, and then it remains wholly with the Convention to determine what time shall be devoted to each particular question limited by its importance, and by its practical utility. I submit, therefore, to the gentleman of the Convention, that by the amendment which I have suggested, the benefits of the previous question will undoubtedly be gained without the disadvantages which must result, in a certain degree, by the adoption of that rule at the present time, and without prejudicing the rights of any one.

Mr. HALE—I move to amend by substituting the rule to be found at the bottom of page 54 of the Journal.

The SECRETARY proceeded to read the amendment of Mr. Hale, as follows:

RULE 29. The Convention may at any time, by a vote of a majority of all its members present and voting, fix the time at which any vote shall be taken, and limit the time which its members shall respectively occupy in the discussion of any motion or resolution; and the resolution to fix the time for taking such vote, or to limit the time of debate, shall be deemed a privileged motion, and shall be decided without amendment or debate.

Mr. HALE—Mr. President, it has become very evident to members of this Convention that we have got to adopt some provision like the previous question, or substantially equivalent to it, in order to get through with our business and finish our debates. But as the Convention has once voted by a large majority against the adoption of the previous question and inasmuch as the previous question has some features which are objectionable, and which do not belong

Mr. ALVORD—Then there is certainly every opportunity for a full discussion.

Mr. WEED—I do not think it applies to the Committee of the Whole. Still it may, for there is now no provision that it shall not, and there is a rule that all rules of the Convention shall apply to the Committee of the Whole. But I understand exactly the trouble in the Committee of the Whole. It is but another step in that direction the gentleman must see. He knows we did not discuss a single section of the report of the Suffrage Committee in the Committee of the Whole, except the first. He knows the whole delay was upon the first section in the Committee of the Whole, and we had to come into Convention on the five minute rule to discuss the rest of it. You may be tired with all the discussion in the Committee of the Whole on the first section, and then report to the Convention, and the discussion upon it comes up, and before the discussion is exhausted you have to apply the rule of the previous question to the first section, and thus you have no opportunity to perfect the other sections. Now I suggest this is an amendment (and it seems to me to be the simplest way to expedite business), that this rule be passed applying it to everything except articles or sections of the Constitution. Then, when an article or section of the Constitution is under discussion, any gentleman upon the floor of this Convention can move to take the vote upon this question in one hour, in two hours or in twenty-four hours from that time without discussion, and he can sweep the five minute rule off entirely, and can move we take the vote without discussion, and fix the time so that all the members of this body will know when a vote is to be taken on the sections of the proposed Constitution which are important, and obviate the whole difficulty. I offer, therefore, this as an amendment: add the following:

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and vote the other way, and as

the reason of my changing  
explained by the remarks  
gentleman from On-  
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at on the adoption of  
select Committee on  
by the following vote:

Allen, C. L. Allen, Alvord,  
Baker, Ballard, Barker,  
Bell, Bergen, Bickford,  
W. C. Brown, Carpenter,  
Clinton, Cooke, Corbett,  
W. Dwight, Endress, Evarts,  
Flagler, Folger, Fowler, Fuller,  
Graves, Greeley, Hadley, Hale,  
Hitchcock, Houston, Hunting-  
ton, Ketcham, Kinney, Krum, Landon,  
A. Lawrence, M. H. Lawrence, Lee,  
McDonald, Merrill, Merritt, Merwin,  
Opdyke, C. E. Parker, Prindle, Prosser,  
Reynolds, Root, Rumsey, L. W. Russell,  
Sheldon, Sherman, Smith, Spencer, Strat-  
ton, Van Campen, Van Cott, Wakeman, Wales,  
Williams — 81.

Noes — Messrs. Barnard, Barto, E. Brooks, E.  
A. Brown, Burrill, Champlain, Chesebro, Church,  
Cochran, Colahan, Comstock, Conger, Corning,  
Daly, Develin, Garvin, Gerry, Hardenburgh, Hatch,  
Hitchman, Kernan, Livingston, Loew, Lowery,  
Magee, Masten, Mattice, More, Morris, Robertson,  
Rogers, Rolfe, A. D. Russell, Schoonmaker,  
Schumaker, Strong, Tappen, S. Townsend, Veeder,  
Verplanck, Weed, Wickham, Young — 43.

Mr. SHERMAN—The change which has just  
been made in the rules renders some other changes  
necessary, in order to make the rules consistent  
with each other. In accordance with previous  
notice, therefore, I move to reconsider the vote of  
June 9th, by which rules 19, 23 and 24 were  
adopted. One of these changes is to except the  
Committee of the Whole from the operation of the  
previous question. Another is to put the previous  
question in its proper place in the class of privi-  
leged motions, and rule 24 is to provide that the  
motion for the previous question, like the motion  
to lie on the table, shall be decided without amend-  
ment or debate.

Mr. WEED—I rise to a point of order, that the  
rule voted down did not receive a majority of two-  
thirds of the Convention.

The PRESIDENT *pro tem.*—The Chair does not  
regard it as an amendment of the rule. It is a  
motion to reconsider the vote by which the rule

was rejected, and, moreover, the motion was  
carried by a vote of eighty-one, which is a  
majority of all elected to the Convention, and so  
is in strict compliance with the rules of this  
body.

The question was put on motion to reconsider  
the vote by which rules 19, 23 and 24 were  
adopted and it was declared carried.

Mr. SHERMAN—I now move that rules 19,  
23 and 24, as reported by the select Committee on  
Rules, be adopted.

The question was then put on the motion of  
Mr. Sherman to adopt rules 19, 23 and 24 as re-  
ported by the select Committee on Rules and it  
was declared carried.

The rules as adopted are in words as follows:

RULE 19. The same rule shall be observed in  
committee as in the Convention, as far as appli-  
cable, except that the previous question shall not  
apply, nor shall the yeas and nays be taken on a  
division.

RULE 23. When a question shall be under con-  
sideration, no motion shall be received except as  
herein specified, and motions shall have pre-  
cedence in the order stated, viz:

1. For an adjournment.
2. For a recess.
3. A call of the Convention.
4. For the previous question.
5. To lay on the table.
6. To postpone indefinitely.
7. To postpone to a day certain.
8. To commit to a Committee of the Whole.
9. To commit to a standing committee.
10. To commit to a select committee.
11. To amend.

RULE 24. The motion to adjourn for the day,  
for a recess, for the previous question, and to lay  
on the table shall be decided without amendment  
or debate. The respective motions to postpone or  
commit shall preclude debate on the main ques-  
tion.

Mr. WEED—I move that the Convention do  
now adjourn.

The question was put on the motion of Mr.  
Weed, and it was declared lost.

Mr. HAND—I desire to ask leave of absence  
for myself for five days.

There being no objection, leave of absence was  
granted.

Mr. PRINDLE—I desire to ask leave of ab-  
sence for Mr. Goodrich, of Tompkins, for one week.

Mr. BICKFORD—I insist that reasons shall be  
given for gentlemen who desire leave of absence.

Mr. PRINDLE—It is to enable him to attend to  
imperative business matters at home that Mr.  
Goodrich desires leave of absence, though I am  
not informed of their nature.

The PRESIDENT *pro tem.*—The Chair is  
informed that the gentleman from Tompkins [Mr.  
Goodrich] desires to be present at a reference  
that has been postponed from time to time to  
suit his convenience, but which the opposing  
counsel will consent no longer to postpone. If  
there are no objections, leave of absence for Mr.  
Goodrich will be granted.

Mr. DEVELIN—I move that the rules as they  
now stand be printed and laid upon the tables of  
members.

to the rule proposed by the gentleman from New York, amended as I propose, it seems to me it will be more consistent for us to adopt that rule than to reverse our former action by adopting the previous question in terms. The adoption of this rule will make privileged motions both the motion to fix the hour for taking the vote on any question and that to limit the length of time that gentlemen shall speak, so that we will have it in our power to end discussion at almost any time.

Mr. GERRY—I accept the amendment of the gentleman from Essex [Mr. Hale].

Mr. LAPHAM—I am opposed to this amendment or to any amendment which proposes a departure from the adoption of the usual rule in regard to the previous question. The amendment of the gentleman from New York [Mr. Gerry] adds nothing whatever to the powers belonging to this body under the rules as they now exist. I would call the attention of the members of this Convention to the repeated efforts of the chairman of the Committee on the Right of Suffrage [Mr. Greeley] to have a rule adopted fixing the time for taking the vote upon his report, and to have a rule adopted limiting the time of debate upon that report. Day after day, at every session of the Convention, that gentleman has persistently tried to get such a rule adopted, but has been defeated by lengthy and protracted debates.

Mr. HALE—I would ask the gentleman [Mr. Lapham] whether the defeat of such propositions has not always been owing either to debate or amendment, and whether the provision that such a vote shall be taken without amendment or debate will not insure the success of such an effort hereafter.

Mr. LAPHAM—Not at all. It in no way modifies the difficulty in my judgment, and will not shorten our action when it becomes necessary to do so. Where is the danger or hardship of adopting the previous question? Until the majority of this Convention are satisfied that sufficient debate has been had upon any proposition, or upon any section which may be reported by a committee, the previous question cannot be ordered. It requires a vote of the majority to order it in all cases, and all apprehension which gentlemen express here is directly an imputation upon the good faith of the majority, who, it is supposed, will call for the previous question. They will not resort to it capriciously and injuriously and cut off debate and discussion. There is no desire to do anything of that kind. I call the attention of this Convention to the liberality which has been exercised up to this hour in indulging the debate upon every proposition that has been submitted for the consideration of this Convention. But, sir, we have now spent nearly two months of the time allowed to us for the revision of the Constitution of this State, and we have not yet finished the report of a single committee, we have simply adopted the report of one of the committees and have handed it over to another committee for further revision, and when it comes back here, unless we have the previous question, we may again spend three weeks more in discussing questions which will arise upon the report of that committee, and thus the report of the Suffrage Committee, after having occupied three

weeks of our time, would, if the whole subject had to be gone over again, occupy half of the time of the session of this Convention. There is no other mode in which the well-disposed members of this Convention—and I assume that we are all well disposed—can bring to a proper determination the result of our labors except by having the previous question to be used when it is necessary to cut off useless and protracted debate and cut off frivolous and unnecessary amendments, and to cut off a repetition of amendments which are precisely the same thing, although changed slightly from the form in which they have been passed upon. There is no other mode in which we can bring our labors to a termination and it is for this reason, and with no desire or design, let me assure members of this Convention, so far as I am concerned, to use this rule harshly, unjustly, or improperly at untimely points of debates, that I have called up for the consideration of this Convention the motion to reconsider the vote by which the previous question was stricken out of the report of the select Committee on Rules. I hope that the amendment of the gentleman from New York [Mr. Gerry] will not prevail, and that we shall adopt the previous question as it is used customarily in parliamentary bodies, without any design whatever to use it in any other way, except that which the parliamentary law teaches.

The question was then put on the amendment of Mr. Gerry and it was declared lost.

Mr. GERRY—I offer the following further amendment:

Insert in the second line of such rule, after the word "affirmative," the words "by a two-thirds vote of those present and voting."

My object in offering this further amendment is, for the purpose of testing the sincerity of the declarations of the gentleman from Ontario [Mr. Lapham], that there is no desire on his part, by moving to restore this rule of the previous question, to cut off debate, and that the "well-disposed members" of the majority party of this Convention will not resort to the previous question, except to cut off frivolous amendments; and also that there is no desire on the part of such gentlemen to enforce the rule in reference to the previous question "harshly." By this amendment which I now offer the power is given to *two thirds* of the members of the Convention present, to regulate and govern the exercise of the previous question, and its enforcement whenever it may become necessary. As the rule now stands, and as offered by the gentleman from Ontario [Mr. Lapham], it is to be enforced at the will of a mere majority vote of members present. The amendment which I offer requires the acquiescence of two-thirds of those present and voting, and thus protects the rights of the minority against undue or partisan oppression.

Mr. HUTCHINS—Mr. President—[cries of "No," "No"] I was merely going to observe that the gentleman who last spoke [Mr. Gerry] voted, when the motion was before the Convention originally, to strike out the rule for the previous question, against striking out. It seems that he has changed his mind since that time in that respect. I have also changed my mind. I voted against

the previous question, and I propose now to change my vote and vote the other way, and as he voted then.

Mr. GERRY — And the reason of my changing my vote now is best explained by the remarks that fell from the lips of the gentleman from Onondaga [Mr. Alvord] on Tuesday last relative to the course about to be pursued by the party in majority in this Convention.

The question was then put on the amendment of Mr. Gerry and it was declared lost.

The PRESIDENT *pro tem.* announced the question to be on the adoption of rule 29 as originally reported by the select Committee on Rules.

Mr. WEED — Believing as I do that this rule will work injuriously, I feel impelled to call for the ayes and noes upon the question of its adoption.

A sufficient number seconding the call the ayes and noes were ordered.

The question was then put on the adoption of rule 29 as reported by the select Committee on Rules, and it was adopted by the following vote:

**Ayes** — Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Archer, Axtell, Baker, Ballard, Barker, Beadle, Beala, Beckwith, Bell, Bergen, Bickford, Bowen, E. P. Brooks, W. C. Brown, Carpenter, Case, Cheritree, Clark, Clinton, Cooke, Corbett, C. C. Dwight, T. W. Dwight, Endress, Evarts, Farnham, Ferry, Flagler, Folger, Fowler, Fuller, Fullerton, Gould, Graves, Greeley, Hadley, Hale, Hammond, Hand, Hitchcock, Houston, Huntington, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, Opdyke, C. E. Parker, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, L. W. Russell, Seaver, Sheldon, Sherman, Smith, Spencer, Stratton, Van Campen, Van Cott, Wakeman, Wales, Williams — 81.

**Noes** — Messrs. Barnard, Barto, E. Brooks, E. A. Brown, Burrill, Champlain, Chesebro, Church, Cochran, Colahan, Comstock, Conger, Corning, Daly, Develin, Garvin, Gerry, Hardenburgh, Hatch, Hitchman, Kernan, Livingston, Loew, Lowery, Magee, Masten, Mattice, More, Morris, Robertson, Rogers, Rolfe, A. D. Russell, Schoonmaker, Schumaker, Strong, Tappen, S. Townsend, Veeder, Verplanck, Weed, Wickham, Young — 43.

Mr. SHERMAN — The change which has just been made in the rules renders some other changes necessary, in order to make the rules consistent with each other. In accordance with previous notice, therefore, I move to reconsider the vote of June 9th, by which rules 19, 23 and 24 were adopted. One of these changes is to except the Committee of the Whole from the operation of the previous question. Another is to put the previous question in its proper place in the class of privileged motions, and rule 24 is to provide that the motion for the previous question, like the motion to lie on the table, shall be decided without amendment or debate.

Mr. WEED — I rise to a point of order, that the rule voted down did not receive a majority of two-thirds of the Convention.

The PRESIDENT *pro tem.* — The Chair does not regard it as an amendment of the rule. It is a motion to reconsider the vote by which the rule

was rejected, and, moreover, the motion was carried by a vote of eighty-one, which is a majority of all elected to the Convention, and so is in strict compliance with the rules of this body.

The question was put on motion to reconsider the vote by which rules 19, 23 and 24 were adopted and it was declared carried.

Mr. SHERMAN — I now move that rules 19, 23 and 24, as reported by the select Committee on Rules, be adopted.

The question was then put on the motion of Mr. Sherman to adopt rules 19, 23 and 24 as reported by the select Committee on Rules and it was declared carried.

The rules as adopted are in words as follows:

**RULE 19.** The same rule shall be observed in committee as in the Convention, as far as applicable, except that the previous question shall not apply, nor shall the yeas and nays be taken on a division.

**RULE 23.** When a question shall be under consideration, no motion shall be received except as herein specified, and motions shall have precedence in the order stated, viz:

1. For an adjournment.
2. For a recess.
3. A call of the Convention.
4. For the previous question.
5. To lay on the table.
6. To postpone indefinitely.
7. To postpone to a day certain.
8. To commit to a Committee of the Whole.
9. To commit to a standing committee.
10. To commit to a select committee.
11. To amend.

**RULE 24.** The motion to adjourn for the day, for a recess, for the previous question, and to lay on the table shall be decided without amendment or debate. The respective motions to postpone or commit shall preclude debate on the main question.

Mr. WEED — I move that the Convention do now adjourn.

The question was put on the motion of Mr. Weed, and it was declared lost.

Mr. HAND — I desire to ask leave of absence for myself for five days.

There being no objection, leave of absence was granted.

Mr. PRINDLE — I desire to ask leave of absence for Mr. Goodrich, of Tompkins, for one week.

Mr. BICKFORD — I insist that reasons shall be given for gentlemen who desire leave of absence.

Mr. PRINDLE — It is to enable him to attend to imperative business matters at home that Mr. Goodrich desires leave of absence, though I am not informed of their nature.

The PRESIDENT *pro tem.* — The Chair is informed that the gentleman from Tompkins [Mr. Goodrich] desires to be present at a reference that has been postponed from time to time to suit his convenience, but which the opposing counsel will consent no longer to postpone. If there are no objections, leave of absence for Mr. Goodrich will be granted.

Mr. DEVELIN — I move that the rules as they now stand be printed and laid upon the tables of members.



The question was put on the motion of Mr. Devlin and it was declared carried.

Mr. TAPPEN — I desire to move to reconsider the motion by which the previous question was adopted.

The PRESIDENT *pro tem.* — The motion will lie on the table under the rule.

Mr. ALVORD — I rise to a point of order. We have reconsidered that question and under the rules we cannot again entertain a motion to reconsider the subject.

The PRESIDENT *pro tem.* — The point of order is well taken, but nevertheless, the gentleman can give notice if it is any satisfaction. [Laughter].

Mr. McDONALD — I call for the resolution offered by me in regard to this Convention going into Committee of the Whole each day after the Convention has been in session one hour.

Mr. SHERMAN — I think that the resolution was laid on the table by a vote of the Convention.

The question was put on taking the resolution of Mr. McDonald from the table, and it was declared lost.

Mr. DALY — I offer the following resolution, and ask that it be referred to the Committee on Printing:

*Resolved*, That six copies of the Manual, Debates, Documents, Journal, annotated Constitution, and of all other documents or papers printed for the use of the Convention, be deposited in the State Library.

Which was referred to the Committee on Printing.

Mr. MERRITT — I offer the following resolution, and ask that it may be considered at this time.

*Resolved*, That the rule now in operation applicable to the report of the Committee on the Right of Suffrage in regard to debates, shall be continued, and apply to the report of the Committee on the Legislature, its Organization, etc.

Mr. DEVELIN — I propose to debate that resolution.

The PRESIDENT *pro tem.* — The resolution giving rise to debate will lie over under the rule.

Mr. MERRITT — I suggest that under the rule the resolution can be considered now as it pertains to business before the Convention. The next business in order is general orders.

The PRESIDENT *pro tem.* — In the opinion of the Chair the construction put upon the rule by the gentleman from St. Lawrence [Mr. Merritt], is not correct, as the present order of business is resolutions.

Mr. HATCH — I offer the following resolution:

*Resolved*, That the Auditor of the Canal Department be, and he is hereby requested to furnish to this Convention the following information:

1. The cost of the original construction of the Champlain canal, and all improvements thereof, with legal interest thereon.

2. The cost of collection, superintendence, and repairs thereof, with interest.

3. The tolls received, with interest thereon.

4. What difference will be made in the result of the operations of the Erie and Champlain canals, as reported to this Convention, by separating them from the operations of the Champlain canal, when determined as above.

The PRESIDENT *pro tem.* — The resolution will lie over under the rule. The Chair is inclined to think that it was in error in its previous ruling on the resolution offered by the gentleman from St. Lawrence [Mr. Merritt]. Under rule 29, resolutions pertaining to the business of the day are excepted from the provision requiring that resolutions giving rise to debate shall lie over. General orders being the next matter before the Convention the report of the Committee on the Organization of the Legislature may be reached.

Mr. KERNAN — Does the resolution offered by the gentleman contemplate speeches of twenty minutes or five minutes?

Mr. MERRITT — Twenty minutes in Committee of the Whole and five minutes in Convention.

The question was then put on the resolution of Mr. Merritt, and it was declared carried.

Mr. BARTO — I offer the following preamble and resolution:

*WHEREAS*, The act of the Legislature, passed at the session of 1856, creating the office of school commissioner in the several counties, and school commissioner districts in this State, as amended by acts passed in 1864 and 1867, provide that the annual salaries of such school commissioners be paid by the State from the income of the United States deposit fund, thereby diverting from the school fund the sum of about ninety thousand dollars (\$90,000) annually; therefore,

*Resolved*, That it be referred to the Committee on Education and the Funds relating thereto, to inquire into the propriety of such diversion, and whether the salaries of these officers whose duties are almost exclusively local, should not be paid by county tax, instead of from the State treasury.

*Resolved further*, That it be referred to the same committee to inquire into the propriety of abolishing the office of school commissioner, and that the former system of town supervision be restored in its place.

The question was put on the resolution of Mr. Barto, and it was declared carried.

Mr. SCHOONMAKER — I offer the following resolution:

*Resolved*, That the Committee of the Whole be discharged from the consideration of so much of the report of the Committee on the Legislature, its Organization, etc., as relates to the Senate, the number and apportionment of senators, and the organization of senatorial districts, and that that part of the report be referred back to the standing Committee on the Legislature, etc., with instructions to revise the apportionment of Senators and organization of senatorial districts, and to equalize as nearly as may be the ratio of senatorial representation, and also equalize, as near as may be the senatorial districts in regard to population. I ask that the resolution lie over.

The PRESIDENT *pro tem.* — There being no objection the resolution will lie over as requested.

Mr. OPDYKE — I offer the following resolution: The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the special Committee on Official Corruption be authorized to send for persons and papers and to take testimony.

Mr. OPDYKE — I offer that resolution, Mr. President —

The PRESIDENT *pro tem.*—The resolution giving rise to debate it lies over.

Mr. OPDYKE—I merely wish to explain the object of it.

The PRESIDENT *pro tem.*—For that reason it manifestly gives rise to debate, and consequently will lie over.

Mr. KETCHAM—I offer the following resolution:

*Resolved*, That the Committee of Revision, to whom is referred the subject of the right of suffrage, be instructed to report section four with the following amendment, viz:

"In line five strike out the word 'to,' and insert as follows, 'which in cities and incorporated villages shall,' so that it will read, 'The Legislature shall provide for a registry of all citizens entitled to the right of suffrage in each election district, which, in cities and incorporated villages, shall be completed at least six days before every election except town elections.'"

Mr. WEED—I rise to a point of order. The same resolution was offered this morning and voted down.

The PRESIDENT *pro tem.*—The Chair was of that opinion, but it was claimed by others that it was not.

Mr. WEED—Then I rise to debate the resolution.

The PRESIDENT *pro tem.*—The resolution giving rise to debate will lie over under the rule.

Mr. VAN CAMPEN—I offer the following resolution, and ask that it be laid on the table:

*Resolved*, That the Comptroller be and is hereby respectfully directed to furnish for the use of this Convention five hundred copies of the diagrams of this room.

The PRESIDENT *pro tem.*—The resolution will lie over at the request of the mover.

Mr. KINNEY—I offer the following resolution and ask that it be considered at this time:

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the use of this hall be granted to Hon. C. P. Johnson, of Brooklyn, on Tuesday evening, August 6, for the purpose of delivering a free lecture on the subject of the "Philosophy of Politics."

Mr. MORRIS—I offer as an amendment by adding "provided the chamber is not required by the Convention."

Mr. KINNEY—I accept the amendment.

Mr. MERRILL—I move to further amend by referring the resolution to the proprietor of Tweddle Hall. [Laughter].

The PRESIDENT *pro tem.*—The amendment of the gentleman [Mr. Merrill] is not in order.

Mr. ALVORD—I think the Chair is competent to decide as a point of order that we have no power over this room, except to sit in it as members of this Convention.

The PRESIDENT *pro tem.*—The Chair hardly thinks it competent to reverse the decision which the Convention has twice made in that respect. The chamber has been twice allowed to other persons than members of the Convention.

The question was put on the resolution of Mr. Kinney, and it was declared lost.

Mr. GRAVES—I offer the following resolution:

*Resolved*, That the Committee on the Adulteration and Sale of Intoxicating Liquors, be authorized to send for persons and papers to enable them to fully discharge the duty devolving upon them as such committee.

Mr. VEEDER—I move to amend by inserting after the word "persons" the word "samples." [Laughter.]

The question was put on the amendment of Mr. Veeder and it was declared carried. [Laughter.]

Mr. SEAVER—I call for the ayes and noes.

Mr. BARTO—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Barto, and it was declared carried, on a division, by a vote of 52 to 50.

So the Convention stood adjourned.

THURSDAY, August 1, 1867.

The Convention met pursuant to adjournment in the absence of the President, Mr. ALVORD of Oneida acted as President *pro tem.*

Prayer was offered by Rev. HENRY DARLING, D.D.

The Journal of yesterday was read by the SECRETARY.

Mr. S. TOWNSEND—By consent of the gentleman from Ulster [Mr. Young], who yesterday presented a memorial which was read to the Convention, on the subject of the usance of money, I move that the memorial be referred to the Committee on the Preamble and Bill of Rights. Concerning, as it does, the right and privilege of every citizen to give or receive at his own option any agreed price for what he desires to buy or sell, this would appear to be its proper disposition, rather than the original reference to the Committee on Banking and Insurance.

Mr. BELL presented the petition of Joseph A. Bownan and twenty others, citizens of New York, for a separate submission of a clause of the Constitution prohibiting the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. E. BROOKS presented a memorial of the Sons of Temperance of Eastern New York on the same subject.

Which took a like reference.

Mr. GOULD presented the petition of one hundred and twenty citizens of Tompkins County, in favor of prohibiting the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. C. E. PARKER presented the petition of seventy-seven citizens of Tompkins county on the same subject.

Which took a like reference.

Mr. VAN CAMPEN presented three petitions of citizens of Cattaraugus county, in favor of the regulation and against the prohibition of the sale of intoxicating liquors as a beverage.

Which was referred to the Committee on Adulterated Liquors.

Mr. STRATTON presented nineteen petitions from citizens of New York on the same subject.

Which took a like reference.

Mr. STRATTON also presented the petition of ninety citizens of the city of New York in favor of enacting a clause in the Constitution prohibiting the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. STRATTON also presented the petition of sundry citizens of the city of New York on the same subject.

Which took a like reference.

Mr. STRATTON also presented two communications from members of the bar of the city of New York suggesting a plan for the judiciary in the first judicial district.

Which was referred to the Committee on the Judiciary.

Mr. GROSS presented twelve petitions from citizens of New York, Brooklyn, Lyons, Rochester, Suspension Bridge, Niagara Falls and Rondout against a prohibitory liquor law, and asking that a uniform regulation of the traffic in fermented liquors and wines be prescribed by the Convention.

Which was referred to the Committee on Adulterated Liquors.

Mr. BECKWITH presented the petition of George Sherman and thirty-nine others against the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. DUGANNE presented the petition of S. S. Hickock and one hundred and twenty others on the same subject.

Which took a like reference.

Mr. WILLIAMS presented two petitions on the same subject.

Which took a like reference.

Mr. LUDINGTON presented the petition of M. V. Schoonmaker and ninety others on the same subject.

Which took a like reference.

Mr. ANDREWS presented the petition of Luther Little and others on the same subject.

Which took a like reference.

Mr. E. P. BROOKS presented the petition of thirty citizens of Stuyvesant Falls in favor of a prohibitory liquor law,

Which was referred to the Committee on Adulterated Liquors.

Mr. A. J. PARKER—I wish to ask for leave of absence for Mr. Corning for three days, who is obliged to leave town.

No objection being made, leave was granted.

Mr. FERRY—I call from the table the report of the standing Committee on Contingent Expenses in reference to allowing stationery to reporters.

The PRESIDENT *pro tem.* announced the question to be on the motion of Mr. Corbett to substitute the resolution reported by the minority of the committee as amended on motion of Mr. Baker for the resolution reported by the committee.

Mr. BICKFORD—I rise to a question of order.

The report was laid on the table by order of the Convention, and it requires a vote to take it up.

The question was put on the motion to take from the table the majority and minority reports of the committee, and it was declared carried.

Mr. GREELEY—I call for the ayes and noes on the pending motion.

A sufficient number seconding the call, the ayes and noes were ordered,

Mr. GREELEY—I move the previous question.

The PRESIDENT *pro tem.*—The pending question is on the motion to substitute the resolution reported by the minority of the committee as amended, upon the motion of the gentleman from Montgomery [Mr. Baker], and upon that Mr. Greeley moves the previous question.

Mr. CONGER—I submit that the moving of the previous question is merely compelling the Convention—

The PRESIDENT *pro tem.*—The gentleman from Rockland [Mr. Conger] is out of order, the previous question having been moved.

The question was then put on the motion of Mr. Greeley for the previous question and it was declared carried.

The SECRETARY proceeded to read the resolution reported by the minority of the committee as amended on motion of Mr. Baker in words the following:

"Resolved, That each reporter be paid the amount necessary for stationery out of the *per diem* allowance of the members of the Convention."

Mr. KRUM—Is an amendment now in order.

The PRESIDENT *pro tem.*—The Chair is of opinion that an amendment is not now in order.

The roll was then called on the resolution reported by the minority of the committee as amended on the motion of Mr. Baker, and it was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, Alvord, Andrews, Baker, Barto, Bergen, Bowen, E. P. Brooks, W. C. Brown, Carpenter, Farnum, Ferry, Fowler, Frank, Fullerton, Gerry, Gould, Hardenburgh, Houston, Kernan, Kinney, Krum, Landon, Lapham, Livingston, Loew, Ludington, Magee, McDonald, Merritt, Potter, Rathbun, Reynolds, Robertson, Rogers, Rolfe, A. D. Russell, L. W. Russell, Seymour, Sheldon, M. I. Townsend, S. Townsend, Van Cott, Veeder, Verplanck, Wales, Weed—47.

Noes—Messrs. A. F. Allen, N. M. Allen, Axtell, Ballard, Barnard, Beadle, Beals, Beckwith, Bell, Bickford, E. Brooks, E. A. Brown, Case, Cheritree, Chesebro, Church, Clark, Clinton, Cochran, Conger, Cooke, Corbett, Daly, Duganne, T. W. Dwight, Endress, Evarts, Flagler, Fuller, Garvin, Graves, Greeley, Gross, Hadley, Hale, Hammond, Harris, Hitchcock, Hitchman, Huntington, Ketcham, A. Lawrence, M. H. Lawrence, Lee, Masten, Mattica, Merrill, Merwin, Miller, More, Morris, Nelson, Opdyke, A. J. Parker, C. E. Parker, Pond, Prindle, Prosser, Root, Schoonmaker, Seaver, Sherman, Smith, Stratton, Strong, Van Campen, Wakeman, Wickham, Williams, Young—70.

The PRESIDENT *pro tem.*—The question will now recur on agreeing with the report of the majority of the Convention.



Mr. CONGER—Does the previous question apply to the report of the majority.

The PRESIDENT *pro tem.*—It applies, in the opinion of the Chair, to the whole subject.

Mr. FERRY—I call for the ayes and noes.

Mr. GERRY—I move to lay the question on the table.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the subject cannot be laid on the table, because the Convention has determined by a vote that the previous question shall operate.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on agreeing with the report of the majority of the committee adverse to the furnishing of stationery to the reporters, and it was declared carried by the following vote:

*Ayes*—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Ballard, Beadle, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, R. P. Brooks, W. C. Brown, Carpenter, Case, Cooke, C. C. Dwight, T. W. Dwight, Endress, Evarts, Farnum, Ferry, Flagler, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Harria, Hitchcock, Houston, Kernan, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merritt, Miller, Pond, Potter, Prindle, Prosser, Rathbun, Reynolds, Rolfe, Root, L. W. Russell, Schoonmaker, Sheldon, M. I. Townsend, Van Cott, Wickham, Williams—62.

*Noes*—Messrs. Artell, Barnard, E. Brooks, E. A. Brown, Cheritree, Chesebro, Church, Clark, Clinton, Cochran, Co'ahan, Couger, Corbett, Daly, Duganne, Fowler, Frank, Fullerton, Garvin, Gerry, Gross, Hale, Hardenburgh, Hatch, Hitchman, Huntington, Livingston, Loew, Magee, Masten, Mattice, Merrill, Merwin, More, Nelson, Opdyke, C. E. Parker, Robertson, Rogers, A. D. Russell, Seymour, Sherman, Smith, Spencer, Strong, S. Townsend, Van Campen, Veeder, Verplanck, Wakeman, Wales, Weed, Young—53.

The order of resolutions was announced.

The PRESIDENT *pro tem.*—At the time the Convention adjourned there was a resolution under consideration which will be first in order. It was a resolution offered by the gentleman from Herkimer [Mr. Graves], authorizing the Committee on Adulterated Liquors, to send for persons and papers. The gentleman from Kings [Mr. Veeder], moved an amendment to the resolution, which was adopted by the Convention, after which there was a call for the ayes and noes, which was pending when the Convention adjourned. The question before the Convention is, shall the ayes and noes be had upon the amendment of the gentleman from Kings [Mr. Veeder]?

Mr. VEEDER—After consultation with some of the members, I understand that the word "papers" covers the whole ground [laughter], and therefore, with the permission of the Convention I will withdraw my amendment.

Mr. GERRY—I ask that the resolution be read.

The SECRETARY proceeded to read the resolution of Mr. Graves, as follows:

*Resolved*, That the Committee on the Adulteration and Sale of Intoxicating Liquors, be authorized to send for persons and papers to enable them to fully discharge the duty devolving upon them as such committee.

Mr. GRAVES—Certain facts have been disclosed to the committee which makes it, in their judgment, important that this evidence should be obtained for the interest of the Convention, and the people of the State; with that view I hope that the resolution will pass.

The question was then put on the resolution of Mr. Graves, and it was declared adopted.

Mr. DALY—I offer the following resolution and ask that it be referred to the Committee on Finance.

*Resolved*, That the fiscal year shall hereafter commence on the first day of January, and end on the thirty-first day of December of each year, and, all official annual reports (unless otherwise specially directed by the Legislature) shall be made for the calendar year.

Which was referred to the Committee on Finance.

Mr. PRINDLE—I offer the following resolution:

*Resolved*, That the State Engineer and Surveyor be requested to furnish information to the Convention of the state of the work on the extension of the Chenango canal, to the State line of Pennsylvania, the proportion of work already done, and the probable expense in addition to the amount already appropriated of completing said extension.

Which was laid on the table under the rule.

Mr. STRATTON—I offer the following resolution:

*Resolved*, That the Commissioners of Metropolitan police of the city of New York be requested to report to this Convention as soon as practicable, the number of men detailed from the Metropolitan police force, as attendants upon each of the police courts, the courts of general and special sessions, and any other courts in the city of New York during the year 1866, designating the name of each of said courts, and the amounts paid for such attendance upon each of said courts respectively; and also whether the amounts so paid will be increased or diminished for the year 1867, and if so, how much for each of said courts.

Which was laid on the table under the rule.

Mr. OPDYKE—I desire to call up the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the special Committee on Official Corruption be authorized to send for persons and papers, and to take testimony.

Mr. OPDYKE—I have offered this resolution by direction of the committee for which the power is asked. It is due to the committee to say that, in asking this power, they have no intention to commence a general crusade against those who are suspected of official impurity. They do not wish, nor do they intend to assail the character of any citizen, or to scandalize the State. They merely desire to get some specific, and reliable facts on which to base the recommendations that they will feel it to be their duty to make to this Convention. Such facts have been voluntarily tendered to the Convention, and also to the public press. They simply desire to send for the parties making the tender, in order to get this testimony in proper form and shape for the

use of the committee, and, if necessary, for presentation to the Convention.

Mr. HARDENBURGH—It is quite well known that there has been appointed by the Legislature a committee, the members of which are now pursuing their labors in this city and elsewhere, and who are from time to time reporting the result of their labors to this body, as respects the official corruption existing in the State. The resolution authorizing various committees to send for persons and papers will lead, I think, to enormous expenditures; and I cannot at this moment understand the necessity of the authority which has just been given to another committee of this body. With this committee of the Legislature performing the labors they are, in developing official corruption, I do not see the necessity of it, and I, therefore, shall oppose the appointment of this or any other investigating committee upon this subject.

Mr. RATHBUN—The gentleman who last spoke [Mr. Hardenburgh] labors under a misapprehension, I think, in regard to the duty of the committee appointed by the Legislature. I understand that committee are investigating frauds connected with the canals, and not frauds connected with the Legislature. Corruption in the Legislature is not to be reached by the investigations of that committee. Therefore, it seems to me that this committee ought to be authorized to make some investigation, at all events, in reference to charges which are so common in reference to the corruptions of the Legislature.

The question was put on the resolution of Mr. Opdyke, and it was declared adopted.

Mr. KETCHAM—I call up for consideration a resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Committee on Revision, to whom is referred the subject of the right of suffrage, be instructed to report section four with the following amendments, viz.:

In line five strike out the word "to," and insert as follows, "which in cities and incorporated villages shall," so that it will read, "The Legislature shall provide for a registry of all citizens entitled to the right of suffrage in each election district, which in cities and incorporated villages shall be completed at least six days before every election except town elections."

Mr. KETCHAM—The only object of instructing the Committee of Revision to make the amendment indicated by this resolution, as will be seen, is to do away with the necessity of a completion of the registry six days before election which is imperatively required by the section as it now stands. Now, Mr. President, we have persistently and day after day most emphatically rejected almost innumerable propositions for uniformity in the system of registration in the cities and in the country. I entered into the business of listening to the discussion of the report of the very able Committee on the Right of Suffrage (for I have taken no part in the talking) and my views were in favor of uniformity; but reasons assigned by other members of the Convention have convinced me of the impropriety of such uniformity; and yet the section as it has been sent to the committee, it seems to me, requires uni-

formity in just that particular in which there exists the greatest necessity of a difference between the cities and country. But for preventing frauds in the cities and large villages we need no registry; we do not want it in the country districts embracing but three hundred or four hundred voters scattered over a large area of territory and each known to the other. We are willing, however, to submit to the inconvenience of it because we deem it needful in other districts, and because we desire the fewest possible special and local provisions in the Constitution. But if the provision requiring a completion of the registry six days before election is adopted, it not only imposes burdens on these thinly settled districts which are wholly unnecessary, and which answer no good purpose whatever, but almost invariably excludes from voting very many of the best citizens of those districts. I trust, therefore, the resolution will be adopted.

Mr. WEED—I rise to a question of order. This identical proposition of the gentleman from Wayne [Mr. Ketcham] has been voted down by the Convention.

The PRESIDENT *pro tem.*—The Chair is informed that the then presiding officer did rule upon some point of order raised in reference to the resolution.

Mr. KETCHAM—The facts are these: I sought to procure the adoption of this amendment, when the section was originally introduced by the gentleman from New York [Mr. Daly] but it was excluded by the pendency of two amendments. Again I sought to procure its adoption as an amendment to the resolution by which the article was sent to the Committee of Revision. It will be recollected that it was then ruled out as having been once rejected by a vote of the Convention. But upon examination it was found not to have been so rejected, and I was yesterday so fortunate as to get it fairly before the Convention.

Mr. SHERMAN—I move that the resolution lie on the table.

The question was put on the motion of Mr. Sherman, and it was declared carried.

Mr. GOULD—I am informed, Mr. President, that the Constitution with the accompanying notes, which is one of the documents on our files, is very nearly printed, and that it will not be bound unless there is a special order on the part of the Convention to that effect. I therefore offer the following resolution:

*Resolved*, That the Constitution, with notes, be bound in the same style as the Manual, and that two copies thereof be given to each member.

The PRESIDENT *pro tem.*—Under the rule the resolution must be referred to the Committee on Contingent Expenses.

Mr. SHERMAN—I offer the following resolution:

*Resolved*, That until otherwise ordered, the daily sessions of the Convention commence at ten o'clock A. M., and that each day, except Saturdays, a recess be taken at two o'clock P. M. till half-past seven P. M.

Mr. BARNARD—I move to strike out half-past seven and insert four o'clock.

Mr. BELL—I hope that the amendment may not be sustained. It is necessary that the ques-

mittees should have some time for consultation and meetings, and four o'clock is a very proper hour. Let the Convention meet at ten o'clock in the morning and sit until two, which will give a session of four hours. Then let the committees hold meetings in the afternoon and let the Convention sit again at seven o'clock in the evening until any hour they please. That, to my mind, will be better than to hold afternoon sessions. It is very important that we should have some time to prepare business in committees for this Convention, and there is no better time, in my estimation, than in the afternoon. I hope, therefore, that the original resolution will be adopted.

Mr. T. W. DWIGHT—I move as an amendment, the resolution which will be found on page 264 of the Journal of the Convention, providing for adjournments at the close of the week, as follows:

"And that the adjournments of this Convention at the close of the week shall, hereafter, be regulated as follows: On Saturday next the Convention shall adjourn at one o'clock P. M., to the succeeding Monday at ten o'clock A. M.; on the succeeding Friday the Convention shall adjourn at two o'clock P. M., to the following Monday at half-past seven o'clock P. M.; and this order shall be pursued week by week in regular alternation."

The PRESIDENT *pro tem.*—Does the gentleman from Oneida [Mr. T. W. Dwight] offer that as an additional amendment.

Mr. T. W. DWIGHT—Yes, sir.

The question was then put on the amendment of Mr. T. W. Dwight and it was declared adopted.

Mr. BARNARD—The only reason that I had for offering the amendment was that it would be inconvenient for us to meet at half-past seven o'clock, as then all the gas lights in the chamber are burning, and during warm weather we would find it excessively hot. We would find ourselves among the 80's and 90's. I therefore suggest that four o'clock would be better because the chamber would be much cooler than in the evening.

Mr. KVARIS—I hope that the amendment of the gentleman from Kings [Mr. Barnard], will not prevail. It is of the utmost importance that we should be able to devote four hours to the public sessions of the Convention. It is very important that we should have some period of the day suitable for committee meetings. By prolonging the morning session from three hours to four hours, I think we shall gain in the dispatch of business much more than the additional hour, and by adding an additional session at half-past seven, capable, according to the temper of the Convention, of indefinite extension through the evening, I think we shall accomplish a great deal more.

The question was put on the amendment proposed by Mr. Barnard, and it was declared lost.

Mr. T. W. DWIGHT—At the suggestion of some gentlemen interested in adjournment I would suggest an amendment that the adjournment of Friday should be at one o'clock instead of two o'clock P. M.

The PRESIDENT *pro tem.*—That amendment can only be made by unanimous consent, the amendment of the gentleman [Mr. T. W. Dwight] having already been adopted by the Convention.

Mr. LOEW—Is another amendment in order?

The PRESIDENT *pro tem.*—In the opinion of the Chair it is.

Mr. LOEW—I move that the adjournment be every Friday at two o'clock until the following Monday at half-past seven.

Mr. RATHBUN—I hope that amendment will not prevail. There are a great many members of this Convention who cannot go home between Saturday and Monday, and some who cannot go home even between Friday and Monday, and who have to remain here. I hope that those who are so far away from home that they cannot take advantage of the recesses that are given, will be indulged in having something to do instead of leaving them to rove about the city without any sort of occupation.

The question was put on the amendment of Mr. Loew and it was declared lost.

Mr. C. C. DWIGHT—I move to amend the amendment adopted by the Convention by striking out two o'clock on Friday, and inserting one o'clock, in order that the Convention may adjourn in time for delegates to take the western train at a quarter past one.

The question was put on the amendment of Mr. C. C. Dwight, and it was declared carried.

Mr. MATTICE—I move to strike out Monday at half-past seven o'clock P. M., and insert Tuesday at ten o'clock A. M.

The question was put on the amendment of Mr. Mattice, and it was declared lost.

Mr. LIVINGSTON—I move to amend by inserting Monday at seven o'clock P. M. instead of Monday at eleven o'clock A. M., where the word Monday first occurs.

The PRESIDENT *pro tem.*—The Chair will inform the gentleman from Kings [Mr. Livingston] that ten o'clock A. M. has been passed upon by the Convention.

The PRESIDENT *pro tem.* then announced the question to be on the amendment of Mr. Sherman as amended on the motion of Mr. T. W. Dwight.

Mr. WAKEMAN—I think it would be better to leave the question of the hour of holding the extra sessions to the discretion of the Convention each day, and I therefore offer the following amendment:

Strike out the words, "and that each day except on Saturdays, a recess be taken at two o'clock P. M. till half-past seven o'clock P. M."

Mr. BELL—The difficulty of that arrangement is that committees would never know what to depend upon, whether they will be able to have a committee meeting or not. For the last week or two the work of the committees has been entirely deranged from the uncertainty of being able to hold a committee meeting. The meetings of the committees are as important as the public sessions of this body, and I hope that we will have some definite understanding whether we will have a recess or not, and if we decide to have a recess at what time we will reassemble; whether in the evening or afternoon. I think it is best to now fix this whole matter, that we may go along un-



understandingly, both as regards the sessions and committee meetings.

The question was put on the amendment of Mr. Wakeman and it was declared lost.

Mr. SHERMAN — The amendment suggested by my colleague [Mr. T. W. Dwight] and which has been adopted by the Convention makes it necessary that the resolution be further amended. I therefore move to amend by adding after the word "Saturdays," the words "and on alternate Fridays."

The question was put on the amendment of Mr. Sherman, and it was declared carried.

Mr. GRAVES — I move that the words "succeeding Friday" be stricken out, and the words "succeeding Saturday" be inserted, so that this Convention shall adjourn on each Saturday at one o'clock.

The question was put on the amendment of Mr. Graves, and it was declared lost.

The question then recurred on the resolution of Mr. Sherman as amended, and it was declared carried.

Mr. HUTCHINS — I offer the following resolution:

*Resolved*, That the counsel to the corporation of the city of New York be requested to furnish to this Convention the following information, viz.:

1. The number of suits or actions at law now pending against said city.

2. The number of unpaid judgments now standing of record against said city, and the total amount thereof.

The PRESIDENT *pro tem.* — The resolution will lie on the table under the rule.

Mr. GERRY — I offer the following resolution:

*Resolved*, That the clerk of the common council of the city of New York be and he is hereby requested to furnish this Convention with copies of the report of a select committee of such common council, heretofore appointed to inquire and report what rights and franchises now belong to said city, and of what rights and franchises said city has been deprived of by legislative interference or otherwise.

The PRESIDENT *pro tem.* — The resolution will lie on the table under the rule.

Mr. HITCHMAN — I desire to call from the table a resolution offered by myself a week or ten days ago, and which is to be found on page 250 of the Journal, calling for certain information from the tax commissioners of the city of New York as to the value of real estate.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the tax commissioners of the city of New York be instructed to report to this Convention the value, in their judgment, of the real estate in use in that city by the various religious denominations for the purposes of public worship, together with the assessed valuation of the same as returned to them, or the officers preceding them, charged with the duties they now perform, from the year 1847 up to the year when such property or real estate was exempted from taxation, by legislative enactment.

Mr. GREELEY — I desire to have the resolution amended by adding after the words "pur-

pose of public worship," the words "and for other purposes."

Mr. HITCHMAN — I accept the amendment. The question was put on the resolution of Mr. Hitchman, and it was declared carried.

Mr. HATCH — I desire to call up the resolution which I offered yesterday.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Auditor of the Canal Department be and he is hereby requested to furnish this Convention the following information:

1. The cost of the original construction of the Champlain canal, and all improvements thereof, with legal interest thereon.

2. The cost of collection, superintendence and repairs thereof, with interest.

3. The tolls received, with interest thereon.

4. What difference will be made in the result of the operations of the Erie and Champlain canals as reported to this Convention, by separating therefrom the operations of the Champlain canal when determined as above.

Mr. HATCH — I only desire to say that the object of this inquiry is to procure a statement from the Auditor, showing the precise financial condition of the Erie and Champlain canals. The statement heretofore furnished by the Auditor to this Convention mixes the two. The object is very obvious to the members of the Convention.

The question was put on the resolution of Mr. Hatch, and it was declared adopted.

Mr. VERPLANCK — I offer the following resolution:

*Resolved*, That the Canal Commissioners report to this Convention the number of breaks in the Erie canal, within the last ten years, the amount paid to contractors, on account of the same, under their contracts, and the length of time that each break interfered with the navigation of the said canal.

The PRESIDENT *pro tem.* — The resolution will lie on the table under the rule.

Mr. MASTEN — I offer a resolution and ask that it be referred to the Committee on the Judiciary.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Legislature shall provide for the appointment of a receiver-general, who shall have the care and custody of all moneys which now are or hereafter shall be under the control of the courts of this State.

Which was referred to the Committee on the Judiciary.

Mr. BEALS — I wish to call up the resolution offered by me on Wednesday last, and to be found on page 283 of the Journal.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Commissioners of the Land Office be requested to report to this Convention the number of acres of land belonging to the common school fund in 1822, the report to specify the county in which the land was situated, the name of the tract, and the several lots with the number of acres in each.

Also, What lots have been sold, with the price of each, and what remain unsold.

Also, How much money has been received into

the treasury from such sales, and how much is still due upon bonds for lands.

*Also*, Whether any sales of lands under water have been made, whether land under the waters of the Hudson river or under the waters of the East river, or under the waters of the shores of Long Island or Staten Island, or under the waters of the inland lakes; and, if so, what sums of money have been received for such lands, specifying the sum received for each part, and whether the money received for lands under water have been added to the capital of the common school fund, and if not, the reasons for crediting it to any other fund.

*Also*, What lands belonging to the State, whether acquired by escheat or otherwise (except bid in by the commissioners for loaning the moneys belonging to the United States deposit fund), have been given away by act of the Legislature, whether granted to individuals, or to railroads, or charitable institutions, or for public use in any way.

The question was put on the resolution of Mr. Beals, and it was declared carried.

Mr. E. BROOKS—Appreciating the action of the Convention yesterday, that we should deliberate rapidly, I offer the following resolution and ask that it be laid on the table:

*Resolved*, That this Convention will adjourn *sine die* at twelve o'clock, meridian, on Monday, September 9, 1867.

The PRESIDENT *pro tem.*—The resolution will lie on the table at the request of the mover.

Mr. CHESEBRO—I desire to offer the following resolution:

*Resolved*, That the Committee on the Bill of Rights be directed to inquire into and report to this Convention the propriety of providing that married women shall be endowed with a certain amount of the personal estate of their husbands.

Which was referred to the Committee on the Bill of Rights.

Mr. SHERMAN—In pursuance of notice I gave yesterday, I move to suspend the third and twenty-first rules for the purpose of enabling me to offer a resolution.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That in order to facilitate action on the article reported by the Committee on the Legislature, its Organization, etc., the Committee of the Whole be directed to consider, before acting upon the article by sections, the following general propositions, viz:

1. Of what number shall the Senate consist.
2. Of what number shall the Assembly consist.
3. How many Senate districts shall there be.
4. What shall be the term of Senators.
5. What shall be the term of members of Assembly.
6. Shall members of Assembly be elected by counties or by single districts, or in what other manner,
7. Shall the apportionment of Senators be made by the Convention, or be left to the Legislature.
8. Shall the apportionment of members of the Assembly be made by the Convention or by the Legislature.

Mr. CONGER—I would like to inquire of the

gentleman who moves this resolution [Mr. Sherman] whether it is made in concert with the committee who have presented the article which we are to consider in Committee of the Whole, and whether it is deemed expedient by that committee, and as designed to facilitate the settlement of the propositions in their report; because unless the committee ask specially that every proposition should go through this sort of catechetical investigation, I am entirely opposed to the method.

Mr. SHERMAN—The motion I have made is in accordance with the desire of the chairman of the committee [Mr. Merritt] and I believe with the assent of the committee.

Mr. MERRITT—I propose to offer a substitute, if the motion to suspend the rules shall be carried, which covers the same ground. It will be this:

1. How many Senators and senatorial districts shall there be.
2. What shall be their term of office.
3. How many members of Assembly shall there be, and how elected, and term of office.
4. Shall the Convention make the apportionment or direct the Legislature to make it.

Mr. RATHBUN—I am opposed to the proposition altogether. We have a report made by the committee in which they have reported upon all the topics that are now presented in this special proposition, and are all to be taken up and discussed necessarily in the examination of that report. Now, as we proceed, the question of the number of Senators will come up in the report. They have suggested a certain number and we shall discuss the proposition which they bring here, and we approve or disapprove of propositions according to the judgment of the Convention, and so we go step by step over the report on the various topics which are presented in it, and upon each one discuss and examine and determine it. If we go through with the several propositions which are sent here as naked propositions, we would then after all have to take up this same report, and the same discussion and re-examination, and thus our business would be continued and repeated. I submit that this Convention is competent in the examination of this report to decide, as they proceed in the case, how many Senators, and how many Representatives there shall be, and what compensation, and how the districts shall be arranged, and the time for which they shall be elected, and how many, and for what term. We need no prior discussions. It seems to me it will be a total waste of time. The labor will be doubled. I apprehend that the Convention will see it in the same light. I hope this proposition will fail altogether. Let us go to work like practical men; we have something to do. It is here before us in the shape of a report for examination and discussion. We may agree or disagree with the report, but when we have agreed or disagreed with it, our work is done, so far as the report is concerned.

Mr. SHERMAN—I offered the proposition because I supposed it would facilitate the business of the Convention and save time, but if the Convention think that they can dispose of the

subject in a simpler manner, I certainly have no pride in the proposition.

The question was put on the motion to suspend the rules and was declared lost.

The Convention then resolved itself into a Committee of the Whole upon the report of the Committee on the Legislature, its Organization, etc. Mr. ARCHER, of Wayne, in the Chair.

The SECRETARY then proceeded to read the first section of the article as reported by the committee.

Mr. E. BROOKS—I suppose the usual parliamentary way is to read the bill through, and then take it up by sections. I ask that that be done.

The SECRETARY proceeded with the reading.

Mr. NELSON—I move to suspend the reading of the article and take it up by sections.

Mr. E. BROOKS—As a point of order, I contend it must be read through before it is taken up by sections, under the rules of this body.

Mr. NELSON—I withdraw my motion.

The SECRETARY then resumed the reading of the article as reported by the committee and proceeded with it to its conclusion.

The CHAIRMAN—The Secretary will now proceed to read the first section of the article.

The SECRETARY proceeded to read the first section as follows:

SECTION 1. The legislative power of this State shall be vested in a Senate and Assembly. Any elector of this State shall be eligible to the office of Senator or member of Assembly.

Mr. MERRITT—I hope I may be permitted to briefly state the reasons for the majority report. The committee decided that they would not submit a report in writing; but the article submitted embraces the unanimous opinion of that committee, with the exception noted by the gentleman from Jefferson [Mr. Merwin], and defended in the written report submitted by him. In the first section you will notice the addition of this sentence, "any elector of this State shall be eligible to the office of Senator or member of Assembly." In the existing Constitution no qualification was prescribed. The committee thought it very proper that the same requirements should be necessary for the holding of an office as an elector. They also thought that any district choosing a representative should be allowed to select such officer from any portion of the State. This gives them that authority. The condition is that they shall be electors, and that they may reside in any part of the State. Believing that change is not always progress, we thought that the change which took place in 1846 was not to the advantage or interest of the people, when they reduced the term of office of Senators to two years and reduced the districts to a single district; making thirty-two instead of eight; we believe that the anticipations of that body have not been realized in the result. We believe that by retaining large districts and increasing the length of term and the compensation, it will invite into the Legislature the ablest minds of the State. We believe it to be important to make them responsible to a large constituency. The Senate, acting as a conservative body, and allowing elections to take place every year for one-quarter of that body, would be sufficient to test the public judgment on any

question which might arise during a year. With three-fourths constantly in the Senate, the Legislature would not need to be hasty, and having passed upon questions at one session, they would be relieved from importunity unless in the judgment of the Senate such action ought to be reconsidered, and they would not, therefore, be brought up for their attention. We think it will reduce the amount of legislation. The idea entertained by the Convention of 1846 was that these officers (Senators) should be brought nearer to the people, and that by electing in single districts for a single term of two years, would conduce to that end, but they forget that in thus making this change they reduce the standard of qualification required for a seat in that body. Thus much with regard to the Senate. But the idea has prevailed in this committee that the tendency of large districts is in the opposite direction, and it is for that purpose and no other, that we recommend the large districts. We have followed precedent in apportioning the State upon this theory, starting off in the first place with the proposition that the Senate should not be increased, and, as I say, following precedent, we decided to present an apportionment to the Convention, and in doing so, we took for a basis—what we suppose will be the basis in case this Constitution shall be adopted; and that is, the citizen population of the State, or all inhabitants, excluding aliens only. We admit, therefore, to representation under this apportionment, that class who are excluded on account of not possessing the required property qualification, and the committee will find on page 403 of the Manual, a table showing the number of inhabitants, including those who were heretofore excluded on account of not possessing the requisite qualifications. When we came to divide the counties into districts, the first points which presented themselves were the questions of convenience and representative population, and we thought it very well to take the existing judicial districts as a basis. We found also that it would be well to confine as nearly as possible the senatorial districts to coincide with those of the judicial districts, and taking up the city of New York, we found that there was a population which on this basis would entitle them to more than four, and it was thought best to have an additional Senator, and not divide that city. This met with the hearty concurrence of all the members of the committee. At the present time, and under the present Constitution, the city of New York is entitled to five Senators, and will thus be entitled until after the next apportionment which will take place in the year 1875. We could very well divide the remainder of the State into seven districts, and giving four Senators would make twenty-eight. We therefore decided to allow an increase of the Senate to that extent, provided also that New York should during the present ten years be entitled to the same number of Senators which she now possesses, and that after the next enumeration she should be entitled to such additional number as her representative citizen population would entitle her, whatever that number might be. It is desirable that districts should not be changed except there be some good reason for it.



We believe the interests of the city of New York are so identical that you cannot run a line through that city and divide or separate important interests without damage; and we thought it would be better, looking to the elevation of the character of the representatives, they should be elected on that basis and by general ticket; this had its influence in making the apportionments. I will give the committee the representative population on the basis I have stated. The first district contains 574,548 inhabitants; the second district, 464,469; the third district, 381,856; the fourth district, 425,683; the fifth district, 408,872; the sixth district, 398,805; the seventh district, 375,751; the eighth district, 398,815. This leaves four judicial districts as they exist to-day under that division and enumeration. The ratio for a Senator, counting it at twenty-eight, would be 107,135; the ratio for thirty-three would be 103,850. I give these figures that the members of the committee shall at once apply them to the senatorial districts. It never has been usual to divide counties, and we therefore provided that counties should not in making senatorial districts be divided, and gentlemen will find it will be very difficult to apply any rule in forming any senatorial district that will make the representative population exactly alike. It cannot be done. There are other considerations which should also be stated with reference to the formation of such districts, and they are the convenience of the different counties and the facilities for meeting in conventions, etc. The only alterations that we have made, as gentlemen will see, is the alteration in the second, third and sixth districts and the fourth and fifth. We have put into the fifth district Montgomery county, and we have put into the fourth district Albany county, the representative population requiring an addition to the present fourth judicial district. In putting Montgomery into the fifth district it really serves their convenience, as you will see by examining the map; it would be much more convenient for them than it would be to go into the fourth district. The fourth district is the largest of the eight, covering a large territory that is entirely uninhabited, and there is no way I can see, that we can change it, unless the Convention see fit to put into the fourth district Rensselaer county, instead of the county of Albany. Thus much in regard to senatorial districts. The committee also thought it better to return to the old system of electing members of Assembly by counties. The committee was somewhat divided on the question of increasing the Assembly as well as on the question of the manner of election. There seems to me no reason why we should continue the present single assembly district system. There is no local interest pertaining to an assembly district which will not pertain to a county. The Representative of any single district is therefore, in fact, the Representative of a county. Its interest affects the county. It is a corporation, and all parts of it are equally interested. It seemed to us very proper that all parts of the county, and all electors of the county should have a voice in selecting their Representative, and we believed further it would bring into the

Assembly a better class of men—men known all over the county, and of a higher standard, making the office more honorable, and we thought it might perhaps encourage gentlemen who heretofore have declined (especially in these later days) to take seats in the Assembly or to become candidates for that office. The committee at last, as a compromise, agreed to increase the number by eleven, making one hundred and thirty-nine. One reason contended for in the committee in favor of an increase, was that there were several large unrepresented fractions under the present apportionment which might thus be more nearly represented under a new apportionment. I will read a list of the counties which will get an additional number under this proposition of ours. Allegany would get one, Chenango one, Clinton one, Kings one, Monroe one, New York two, Orange one, Steuben one, Suffolk one, Westchester one—making eleven. If the Convention should decide to retain the single district system, of course there would be no necessity for any apportionment, as the apportionment was made last year. On the same census returns as that on which future Legislatures would have to act, we have included in the representative population the class which have heretofore been excluded, and I may add, there being more of that class in the southern part of the State, especially New York city, by reason of the addition of the negro population, they will be entitled to an additional member of Assembly. We believe that in allowing the increase gradually, as the population might increase, especially in the district of New York, that the Senate would not become too large even in the judgment of those who are opposed to enlarging that body. While we do not provide for a permanent fixed number, we do provide for such an increase as will only be gradual, and which would be a very small increase. The gentleman who submitted the minority report contended that there had been no call for abolishing the single district system for members of Assembly. There has been a call for an improvement in the standing and character of our legislative body, and it is because we believe that it will tend to that result that we do away with that system, not that there has been any special call for it, or that it is among the things that the people have specially asked for. We know very well what they want. They want honest legislation, and men of ability in the legislative body. Whatever course will tend to that result we should encourage. With regard to the action of this body upon the apportionment of the Senate, if they desire, or this committee shall choose to recommend that the apportionment should be made by the Legislature, that is if they adopt the four years' time and the increased number of Senators, we would be very willing to allow it to pass over to the next session of that body; we however have the census, and we can ourselves make this apportionment. The question of salary was also a question debated considerably. We do not suppose that we can adopt or fix a salary here that would be an inducement for any very prominent, able men living in our large cities, to come to the Legislature. Local interests and position only, would influence such a result; but the great majority of those persons in the country

who would like to be members, and who are capable and proper persons, would not come here for the small pittance of three dollars a day. If we make it a certain salary for Senators and Assemblymen, competition will grow up among a better class of men who could come here and spend one hundred days, or such time as might be necessary without detriment to their pecuniary interests—and we would have the advantage of their talents and ability if the proper inducements are offered to them to come here, not to pay them fully for their services, but to pay their proper and legitimate expenses—they will come. We therefore agreed to present the sum of one thousand dollars, and we do not propose to limit the sessions, but in order to equalize compensation of members from the different parts of the State, we recommend that ten cents a mile should be allowed for traveling fees in going to and returning from the place of meeting. In the sixth section the only change which we made in the existing Constitution is that we struck out that provision in regard to electing Senators of the United States.

The CHAIRMAN—The gentleman's twenty minutes have expired—

Mr. CONGER—I do not understand the gentleman [Mr. Merritt] who is chairman of this committee as making a speech; he is only making the oral report of the committee. I hope he will not be debarred from finishing it.

The CHAIRMAN—If there is no objection the gentleman can proceed.

Mr. MERRITT—I offered the resolution last evening to limit debate, and I ought not to be the first to trespass on the time of the Committee.

The CHAIRMAN—There being no objection the gentleman will proceed.

Mr. MERRITT—There has been heretofore a difference of opinion as to the authority of the Legislature to prohibit any member of the Legislature from being a candidate for the Senate of the United States, or with regard to the binding effect of our present Constitution, and I will say here that with regard to the action last winter, a minority of the Legislature, democrats, unitedly voted for a member of the Senate, showing they did not regard it as binding or trenching upon the Constitution or laws of the United States in that respect, and I think we should not be the judge in regard to it. I suppose it is a debatable question, but it is very proper to leave it out, and I see no reason why they should not be candidates if they choose to be. The other sections are substantially like those in the existing Constitution. I have given, at least as clearly as I understand them, the reasons that influenced the committee, and I will simply add that the article embodies, with the exception of the gentleman from Jefferson [Mr. Merwin], the unanimous opinion of the committee.

The CHAIRMAN—Are there any amendments to the first section?

Mr. BICKFORD—I offer the following amendment to the first section.

The SECRETARY proceeded to read the amendment, as follows:

Amend section 1 by striking out "electors" in

the second line, and inserting "citizen" in its place. Also, by inserting after the word "State" the words "who shall have resided in this State for one year next preceding his election."

Mr. BICKFORD—The object of this amendment is to make a person eligible to the office of Senator or member of Assembly, who might not be an elector, according to the article on suffrage which we have in effect adopted. It would work an absurdity as it stands now in the case which I will suppose, and which may frequently happen. Under this article, as reported by the committee, a man is eligible to the Legislature although he does not reside in the county for which he is chosen, or from which he is chosen, which is a very proper provision in my judgment, but under this provision he would be ineligible if he did not happen to be a voter. For instance, take my own case. I reside in Jefferson county. I am an elector, and would be if this Constitution was now in force. The people of Lewis county, where I do not reside, might elect me member of Assembly if they chose although I reside in Jefferson county; but if I should remove into Lewis county two months before election, the people of Lewis county would not be at liberty to elect me if they chose. That is simply absurd. Why should my moving into Lewis county deprive them of the privilege of electing me if they chose? It is their privilege to elect the man they want, and the fact that I move from one county to another two months before election should not deprive them of that privilege. Such a case may frequently happen; that a man by reason of his not having resided in the county four months is not an elector, and yet he has been a citizen of the State, and it may be the desire of the people to elect him. It may be the desire to elect men who are not citizens of their county and do not reside there; and I think, therefore, this amendment should meet with the approval of the committee.

Mr. KINNEY—I inquire of the gentleman from Jefferson [Mr. Bickford] if the term "citizen," which he proposes to insert here, will not include women, and if women will not be eligible for the office of Senator.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

The CHAIRMAN—Are there any other amendments to be proposed to the first section? If not, the Secretary will read the second section.

The SECRETARY proceeded to read the second section, as follows:

§ 2. The State shall be divided into eight senatorial districts. There shall be four Senators in each district.

The first district shall consist of the city and county of New York, and shall be entitled to one additional Senator.

The second district shall consist of the counties of Suffolk, Queens, Kings, Richmond and Westchester.

The third district shall consist of the counties of Putnam, Rockland, Dutchess, Orange, Ulster, Greene, Columbia and Rensselaer.

The fourth district shall consist of the counties of Albany, Schenectady, Fulton, Hamilton, Saratoga, Washington, Warren, Essex, Clinton, Franklin and St. Lawrence

The fifth district shall consist of the counties of Jefferson, Lewis, Oneida, Onondaga, Oswego, Herkimer and Montgomery.

The sixth district shall consist of the counties of Otsego, Schoharie, Delaware, Sullivan, Broome, Chenango, Madison, Cortland, Tioga, Tompkins, Chemung and Schuyler.

The seventh district shall consist of the counties of Yates, Seneca, Ontario, Cayuga, Wayne, Monroe, Livingston and Steuben.

The eighth district shall consist of the counties of Orleans, Niagara, Erie, Genesee, Wyoming, Allegany, Cattaraugus and Chautauqua. The whole Senate shall be chosen at the first election held under this Constitution; they shall classify themselves, so that one Senator in each district shall go out of office at the end of each year, and the additional Senator for the first district at the end of the fourth year. After the expiration of their terms under such classification, the terms of their office shall be four years."

Mr. E. BROOKS—I move to strike out the word "Westchester" from the sixth line of the second section. I am opposed to the whole spirit, letter and tenor of so much of this report as is now under consideration. I regard it as extremely unjust and unfair, as trenching upon the rights of the people, as in violation of the spirit of the government, and as altogether wrong. Sir, I wish very briefly to state how the report affects my constituents, and in order to show this properly, I have moved the amendment, which is to strike out the county of "Westchester." Sir, it was not at all necessary, in order to secure a fair apportionment, to make such a report as has been submitted by the Committee on Apportionment, and which is now under consideration. It is made to operate very unjustly upon the constituents which I represent with my three colleagues. It has added a county numbering one hundred and one thousand people, and this excess entirely a surplusage beyond what might be called a uniform number. Now, sir, let me show its operation, and, I am sorry to say, sir, its political or partisan operation, for it is made to bear very heavily upon the district which I partially represent, and very lightly upon other portions of the State. Sir, the second district of the State of New York, as proved by this apportionment, has a population of 541,362 inhabitants. That is the return which is in the census before me, while the third district has a population of 411,000, that is the adjoining district, and the difference between the second district and the third district is 130,000. Well, Mr. Chairman, I cannot conceive, according to my ideas of justice, of a more unfair apportionment than this.

Mr. MERRITT—Will the gentleman allow me to ask him a question?

Mr. E. BROOKS—Yes, sir.

Mr. MERRITT—Upon what basis do you make an apportionment under the existing Constitution?

Mr. E. BROOKS—I am making my remarks upon the basis of a just apportionment of the people of the State of New York, but whether I make them in that direction, or upon the representative portion of the people called citizens, the operation of this report is equally unjust upon the constituents represented by myself and others,

and indeed upon the entire portion of the people of the State on the seaboard, and especially in the city of New York. You discriminate if you take the report, one hundred and thirty thousand against the second district and in favor of the third district. You also make a very much larger discrimination against the city of New York. In other words, you require a population of five hundred and forty-one thousand to make a Senator in the second district and five hundred and forty-five thousand in the first district, while you require a population of only four hundred and eleven thousand to make a Senator in the third district. Now, sir, if the gentleman desires that the voting population should be represented in the senatorial district, the conclusion is equally unfair and unjust. Let me show wherein. In the second district there is a voting population of one hundred and six thousand, and in the third district there is a voting population of only ninety-one thousand, and the discrimination, therefore, tells just as strongly against the second district in this respect as it does in regard to the entire population, or to give the result in figures there is a discrimination of fifteen thousand against the second district, and a discrimination of just so much in favor of the third district. Now, sir, it so happens that the third district, apportioned as it is by this report and by the gentlemen representing the majority in this Convention, was equal to some three thousand at the last election, whereas, if you make an equal division of the people, or of the voting people, as between the second and third districts, the second district would be assured a democratic district, as at present, and the third would be so equally divided that it would become a fair contest between the two parties as to who should be in the ascendancy. But this is not all. The difference, as I have said, between those two districts, is as 130,000, while the average differences in all the other districts of the State, (throwing out entirely the city of New York, and counting the seven districts), operates as a difference against the second senatorial district, equal to 100,000 people. Sir, I do not know by what rule gentlemen undertake, if they mean to represent the people fairly, to discriminate between what are called representative people and the people at large. Sir, the gentlemen who made this report, in advance of the action of the people of this State upon it, have counted in all the negro population of the State as prospective voters, and have counted out the entire alien population because they are not citizens.

Mr. MERRITT—Will the gentleman allow me a moment? This action was taken after the action of this Convention upon the question of including that class.

Mr. E. BROOKS—I do not know when it was taken, nor where it was taken; but I wish to say, as a matter of fact, the entire colored population of this State are to be counted as if they were voters, before the people have acted upon that proposition, and the alien population excluded and that this also is entirely unusual, unfair and unjust. Sir, we are a representative government and a representative people. The Constitution of our State, in its first words, speaks of THE PEOPLE



of the State of New York. The Constitution of the United States, in its preamble, says: "We, THE PEOPLE of the United States, in order to form a more perfect union, establish justice, provide for the common defense, etc., do ordain and establish this Constitution." I hold, therefore, that the people in mass ought to be represented equally and fairly in any apportionment which may be made by this Convention.

Mr. GREELEY—I would like to ask the gentleman whether this is a new rule, or the rule that has always prevailed in this State, apportioning according to the representative population of the State?

Mr. E. BROOKS—Whether it be a new rule or an old rule, it is immaterial as to the remarks I have made, and I have shown that the gentleman from St. Lawrence [Mr. Merritt] and his committee in this report discriminate just as much in regard to the voting population as they do against the entire people, as in the second district which has fifteen thousand more voters than the third, and all this discrimination in favor of the republican district adjoining. I wish also to say that there was a political majority of some two per cent (taking the last election as an illustration of what I wish to say), in favor of the party in ascendancy in this State. In November last, the republicans had a majority of some 13,789 in a poll of 718,841, and yet upon the basis of their report, taking the voting population as I have stated it, they have secured or would secure twenty-four of thirty-three Senators, a majority of fifteen, or nearly fifty per cent. Now, sir, I have not time to analyze this report in other respects, but in my judgment, if you carry out this record, or if you analyze the votes in the respective districts of the State, they will prove to be nearly as unjust in reference to the representative or citizen population as they are in regard to the population at large. Sir, if the democrats of this State should by good fortune, at some future election, change the State vote to the extent of some 80,000, or if by a complete change in the public mind, in regard to Federal and State politics, there shall be 80,000 more democratic votes polled in November next, than were polled in November 1866, the effect upon the senatorial districts would be that the entire democratic party, with a majority of 80,000 would have but thirteen of the thirty-three Senators named, while the republicans would elect twenty Senators, and yet be in a minority of 80,000 in the State; the republicans, as I have said, could hardly carry the third district at all, if the second and third districts were properly divided. In other words, the democrats would always secure the former, and would have a fair chance of carrying the latter.

Mr. MERRITT—I would like to ask the gentleman if he applies his theory to the existing state of facts? With a majority of only 13,000 for our party in the State, the republicans have twenty-seven senators to five democrats.

Mr. E. BROOKS—Yes, sir, that is very true, and you now propose so to act in this body, that with the large increasing population in the city of New York, amounting to-day upon any fair census, to at least one million people, to give to

that city a single additional senator, and to allow it no representation in proportion to its population, and you have, most unjustly, in my judgment, added the strong democratic county of Westchester, to the democratic counties of Kings, Queens and Richmond and, these strong democratic counties are thus added with the knowledge that the political effect will be to increase your already large republican majority and to decrease the democratic power in the State. If with the vast power which you already hold in the western part of the State, and which enables you by your majorities to control the National and State politics, you are not satisfied, what will satisfy you? You have, also, so formed and constructed the several districts, that if the Convention should adopt the report before us, it would deny to the minorities any fair representation. I have a table before me which shows what might be an equitable distribution of all the districts, without trenching improperly upon the rights of the people, or upon the rights of the two great parties in the State. I will not occupy your time in reading it, but I wish to read just so much of it as relates to the district which I represent. I will take the following four counties: Kings, 311,090; Suffolk, 42,869; Queens, 57,997; Richmond, 28,209; total, 440,165; which excludes Westchester, which would, in an equitable division for the second district—

Here the gavel fell, the gentleman's time having expired.

Mr. GREELEY—I propose an amendment to the 2d, 3d, and 4th sections of this report, which I will read. It is radically different from that of the gentleman from Richmond [Mr. E. Brooks], and therefore should, I think, be considered first—the question being properly whether we shall adhere to the large district system or adhere to smaller ones. I will read my amendment:

"Strike out sections two, three and four, and insert as follows:

"§ 2. The Legislature for 1868, shall divide the State into fifteen senate districts, whereof each shall contain, as nearly as may be, with due regard to the integrity of counties, an equal number of legal voters, and whereof each district shall be entitled to elect three Senators."

I think it best that there should be an increase proportionate to the large increased population of the State.

"Each voter may, at his discretion, repeat twice or thrice on his ballot for Senator the name of a candidate; provided, that all names borne thereon, including repetitions, shall not exceed three; and each ballot shall be counted two or three votes, as the case may be, for any candidate whose name may be thus repeated."

The object here is to gain the result—so greatly desired by political thinkers in our day—of the representation of minorities. That is, to allow all the people to participate in the representation of the State. You and I are perfectly aware that there may be a district containing 50,000 voters, who may vote 24,000 on one side and 26,000 on the other, and the 24,000 are entirely suppressed in the result. They are not heard in this hall. They have no voice proportioned to their population. They are simply null, so far as representa-

tion is concerned; and the consequence is, that, in one part of the State, only one section of the people is represented, and another part in another section. I propose to have all the people represented. That is to say: let us suppose one district, composed of Chautauqua and Cattaraugus counties, in which is an overwhelming republican majority; in that locality, the minority may nominate one man and print his name three times on their ballots, and thus certainly elect him. In New York city, where the republicans are a decided minority, they could do the same, with a like result. The minority could, in almost any district, concentrate all its votes on one candidate and certainly elect him, unless the preponderance of the majority was overwhelming—say, five or six to one. Thus, all the people in all parts of the State would be represented. People would go to the polls knowing that their votes were not a mere form. In every part of the State, the local minority would go to the polls saying, "We are going to elect our man." They could in each district elect, at least, one man; so that all the people would have a representative of their own choice in the Legislature. I believe that the soundest and the calmest political thinkers of our time have generally come to the conclusion that, while it would make no material difference in the general result—that is, the majority of the people would choose and be represented by a majority in the Legislature—yet all classes of the people—all sections and both parties in all sections—would thus obtain a representative. I think this would be more satisfactory than our present system, and would secure, on the whole, a better representation. I proceed:

"The Senators thus chosen shall hold their office for ——— years; and any vacancy meantime occurring shall be filled by election as heretofore. On the expiration of the terms of Senators, their places shall be filled as above.

"§ 3. There shall be a decennial enumeration or census of the people of this State in the year 1875, and in every tenth year thereafter; and the Legislature in the year following shall re-apportion the State for the choice of Senators and Assemblymen, according to the provisions of this article. No county shall be divided in the formation of a Senate district, unless it shall contain more legal voters than are required to constitute a senate district.

"§ 4. The Legislature for 1868 shall, in like manner divide the State into forty-five assembly districts, whereof each shall be entitled to choose three members of Assembly; but any succeeding Legislature may, provided the people of this State shall, by a direct vote, consent thereto, increase the number to five members from each assembly district.

"The provisions of section two, with regard to a repetition of names of candidates on the same ballot, shall apply likewise to ballots for and the choice of members of Assembly, except where a single member only is to be chosen to fill a vacancy."

I propose that the same principle of allowing minorities as well as majorities to be represented from every part of the State, should be carried into the election of Assemblymen also; so that in

each district a conceded and notorious minority would say, "There are three to be chosen, and we can surely elect one. We will nominate our best man, and print his name three times on each ballot, so that man will surely be elected." Thus, I hold, there would be a better class of representatives in both Houses; for very often the minority ticket in a county is the better ticket. There is no scrambling to get on this ticket, or at least not so much. I believe we would have better men to make our laws. Concentrating the vote of a large district on a single man, would be pretty certain to give us one good man from that district. Men who have been excluded from office for years in regions where the local minority has long had no voice in this hall, under this system would be represented. I propose forty-five assembly districts, because a very large number of our counties, under this system, would form—very properly—each an assembly district. Oneida, Monroe, Onondaga, Oswego, St. Lawrence, Rensselaer and Westchester counties—a very considerable number—would form each a district, and you would, of course, divide Kings and New York into districts; and when the people shall, as I trust they soon may, become convinced that a larger number of Assemblymen than one hundred and thirty-five, and when we have a sufficiently capacious hall, the people may at any time vote to increase the number of Assemblymen from one hundred and thirty-five to two hundred and twenty-five; which I believe would be a much fairer representation of the people, and would give to the State a much more satisfactory and a less corruptible Legislature than the smaller number wherewith we have usually legislated. I ask that this amendment be printed; and ask that it be fairly considered by the Convention, before it is voted on—at least, before it is voted down.

The SECRETARY proceeded to read the amendment of Mr. Greeley, as follows:

Strike out sections two, three and four, and insert as follows:

"§ 2. The Legislature for 1868 shall divide the State into fifteen senate districts, whereof each shall contain, as nearly as may be, with due regard to the integrity of counties, an equal number of legal voters, and whereof each district shall be entitled to elect three Senators. Each voter may, at his discretion, repeat twice or thrice on his ballot for Senator the name of a candidate, provided, that all the names borne thereon, including repetitions, shall not exceed three; and each ballot shall be counted two or three votes, as the case may be, for any candidate whose name may be thus repeated.

"The Senators thus chosen shall hold their office for — years; and any vacancy meantime occurring shall be filled by election as heretofore. On the expiration of the terms of Senators, their places shall be filled as above.

"§ 3. There shall be a decennial enumeration or census of the people of this State in the year 1875, and in every tenth year thereafter; and the Legislature of the year following shall re-apportion the State for the choice of Senators and of Assemblymen, according to the provisions of this article. No county shall be divided in the formation

of a senate district, but such as contain more legal voters than are required to constitute a senate district.

"§ 4. The Legislature for eighteen hundred and sixty-eight, shall, in like manner, divide the State into forty-five assembly districts, whereof each shall be entitled to choose three members of Assembly; but any succeeding Legislature may, provided the people of this State shall, by a direct vote consent thereto, increase the number to five members from each assembly district,

"The provision of section two, with regard to a repetition of names of candidates on the same ballot, shall apply likewise to ballots for and the choice of members of Assembly, except where a single member only is to be chosen to fill a vacancy."

Mr. HALE—I am very much gratified by the presentation of the proposition of the gentleman from Westchester [Mr. Greeley,] in which is embodied a principle which I think will commend itself to all those who have given the subject consideration. I would suggest to him, however, whether it would not be well to waive so much of his amendment as applies to the other sections than the second, in order that we may consider separately the propriety of the division suggested by him into senatorial and assembly districts. I suppose, properly, one section should be considered at a time.

Mr. GREELEY—The Convention will of course consider one section at a time; but, in order that the proposition may be fairly before the Convention and be considered as a whole, I think it better to have it printed and laid on our tables.

Mr. WEED—I move that the committee do now rise, report progress and ask leave to sit again.

Whereupon the committee rose, and the President *pro tem.* [Mr. ALVORD] resumed the Chair in Convention.

Mr. ARCHER from the Committee of the Whole, reported that they had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein but not having gone through therewith, had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The question was then put on the motion to grant leave and was declared carried.

Mr. VEEDER—This is a very important proposition, and I think we ought to have time to consider it. I therefore move that this amendment offered by the gentleman from Westchester [Mr. Greeley] be laid on the table until printed.

The question was then put on the motion of Mr. Veeder and was declared carried.

The PRESIDENT *pro tem.*—The Chair wishes to say to gentlemen, in order to facilitate the business of the Convention, and for the purpose of avoiding any other course being pursued, that under the rule there is no necessity for dissolving the Committee of the Whole, because at two o'clock the presiding officer will take the Chair, and that puts the action of the committee in abeyance as any other matter during recess, and at the expiration of the recess the committee proceeds regularly. Under the present direction the Chair will be under the necessity of

asking unanimous consent or else going over the entire order of business from beginning to end, in order to arrive at the special order of business.

On motion of Mr. SHERMAN the Convention took a recess until half-past seven o'clock.

#### EVENING SESSION.

The Convention met at half-past seven o'clock, the President *pro tem.*, Mr. ALVORD, in the Chair.

The PRESIDENT *pro tem.* presented a communication from the Auditor of the Canal Department, in answer to a resolution of the Convention, adopted July 12, in reference to the contracts, repairs, improvements, etc., on canals.

Which was laid on the table and ordered to be printed.

The Convention then resolved itself into the Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc., Mr. ARCHER, of Wayne, in the Chair.

The CHAIRMAN—The Convention is now in Committee of the Whole, on the report of the Committee on the Organization of the Legislature. The pending question is on the motion of the gentleman from Richmond [Mr. Brooks] to strike out the county of Westchester from the second district. The amendment of the gentleman from Westchester [Mr. Greeley] not being germane to the proposition of the gentleman from Richmond [Mr. E. Brooks] is not at this time in order.

Mr. BALLARD—I move to amend by striking out the section as it now stands and inserting as follows:

Amend section two as follows:

The State shall be divided into thirty-two senatorial Districts, each of which shall choose one Senator.

The first district shall consist of the counties of Suffolk, Queens and Richmond.

The second district shall consist of the first, second, third, fourth, fifth, seventh, eleventh, thirteenth, fifteenth, nineteenth and twentieth wards of the city of Brooklyn in the county of Kings.

The third district shall consist of the sixth, eighth, ninth, tenth, twelfth, fourteenth, sixteenth, seventeenth and eighteenth wards of the city of Brooklyn, and the towns of Flatbush, Flatlands, Gravesend, New Lots and New Utrecht, of the county of Kings.

The fourth district shall consist of the first, second, third, fourth, fifth, sixth, seventh, thirteenth and fourteenth wards of the city and county of New York.

The fifth district shall consist of the eighth, ninth, fifteenth and sixteenth wards of the city and county of New York.

The sixth district shall consist of the tenth, eleventh and seventeenth wards of the city and county of New York.

The seventh district shall consist of the eighteenth, twentieth and twenty-first wards of the city and county of New York.

The eighth district shall consist of the twelfth, nineteenth and twenty-second wards of the city and county of New York.



The ninth district shall consist of the counties of Westchester, Putnam and Rockland.

The tenth district shall consist of the counties of Orange and Sullivan.

The eleventh district shall consist of the counties of Dutchess and Columbia.

The twelfth district shall consist of the counties of Rensselaer and Washington.

The thirteenth district shall consist of the county of Albany.

The fourteenth district shall consist of the counties of Greene and Ulster.

The fifteenth district shall consist of the counties of Saratoga, Montgomery, Fulton, Hamilton and Schenectady.

The sixteenth district shall consist of the counties of Warren, Essex and Clinton.

The seventeenth district shall consist of the counties of St. Lawrence and Franklin.

The eighteenth district shall consist of the counties of Jefferson and Lewis.

The nineteenth district shall consist of the county of Oneida.

The twentieth district shall consist of the counties of Herkimer and Otsego.

The twenty-first district shall consist of the counties of Oswego and Madison.

The twenty-second district shall consist of the counties of Onondaga and Cortland.

The twenty-third district shall consist of the counties of Chenango, Delaware and Schoharie.

The twenty-fourth district shall consist of the counties of Broome, Tioga and Tompkins.

The twenty-fifth district shall consist of the counties of Cayuga and Wayne.

The twenty-sixth district shall consist of the counties of Ontario, Yates and Seneca.

The twenty-seventh district shall consist of the counties of Chemung, Schuyler and Steuben.

The twenty-eighth district shall consist of the county of Monroe.

The twenty-ninth district shall consist of the counties of Niagara, Orleans and Genesee.

The thirtieth district shall consist of the counties of Wyoming, Livingston and Allegany.

The thirty-first district shall consist of the county of Erie.

The thirty-second district shall consist of the counties of Chautauqua and Cattaraugus.

Mr. BALLARD — My main purpose in introducing that amendment was to retain the present senatorial divisions of this State. I am not so tenacious of the particular counties embraced in that amendment as they now stand. I would state that the districts as mentioned in that amendment are as they now exist. I am satisfied, Mr. Chairman, that the creation of these eight senatorial districts will tend to remove the power further from the people. By the advance of our population, each of these eight districts is equal to a State of itself, and the tendency of it would be to place the control of the nominating conventions in each of these districts in the hands of a few men. It is taking a step backward instead of keeping pace with the progress of the age. Senators should be intimately acquainted with the wants of their constituents; and their constituents should know each Senator intimately; they should feel continually their responsibility to their immedi-

ate constituency. This would not prevail to the extent that it now does in those large districts. Senators might be in office in a remote county and know nothing of the immediate wants of their constituency in another part of the district. That would be the tendency of it. We had better keep, as it seems to me, in the plan that has been sanctioned by the experience of the past years. Again, it implies or rather suggests the want of confidence in the people, as though the constituents in each of these thirty-two senatorial districts as they now stand, were not capable of selecting the proper candidates for senatorial nominations, as they would be if they were grouped together in a territory almost as large, as I said before, as a State. I do not accede to that proposition. I believe that the intelligence of the people of the present day in this State in each of these thirty-two districts are equal to all emergencies of a senatorial nomination or a senatorial election. We had better abide by the experience we have had for the past years, in regard to the selection of candidates and the election of Senators. As to the term of office, whether it shall be for two or four years, I am not now prepared to express an opinion. Perhaps it would be better to enlarge the term of office in conjunction with the enlargement of their compensation. I do insist it would be imprudent to make so radical a change in our senatorial districts as is implied in this report. My belief is it would never be sanctioned by the people of this State; it is not in accordance with their expectations or their desires.

Mr. CONGER — I am opposed to the representation in the Senate as devised by the committee. I differ with them *toto celo* as to the basis of representation and the mode of distribution into districts. To show that my objection is just, I premise a few statistics drawn from the last census of the State. By that census, Mr. Chairman, the population of the State was nearly four millions, its area nearly forty-four thousand square miles, and its wealth fifteen hundred and fifty millions of dollars. The population of the city of New York was nearly one-fifth of the population of the State, its area less than one two-thousandth, and its wealth was near two-fifths of the whole amount of the assessed aggregate equalized valuation of the property of the State. No man supposes that at the present time the population of the city of New York varies materially from the gross amount of one million of souls, and the complaints that were made in regard to the last census, as lowering the population of the State as well as the city in 1865, below the amount fixed by the United States census of 1860, was sufficient to have enabled this committee to attempt some equation of its errors throughout the State, in whole or by parts, and not to confound either the rules or the false methods of the census with the conclusions to be arrived at by a fair interpretation of it. But, sir, if this be so, as I have premised, if the relative population and wealth of the city of New York to the State be at the least as I have stated, you cannot make the number of districts proposed by the committee, unless you sunder that city in twain. If you propose to leave that untouched, then you can have no more than four Senate districts in the State—at best five.

Gentlemen who are conversant with the figures of the census will readily observe this conclusion to be confirmed on inspection of these maps [pointing to maps suspended on the wall] which have been prepared through the kindness of the chairman of the committee. The map on the left shows the distribution as proposed by the committee for the present senate districts, the map on the right, the old distribution made in 1847 of the judicial districts of the State. The present Senate plan of the committee is based upon a recognition of what were then justly made and established as eight judicial districts of the State. But the committee have overlooked the general and relative differences of increment in population during the last twenty years. The population of the State by the census of 1845 was only two million six hundred and four thousand, while that of the city of New York was three hundred and seventy-one thousand, so that it was perfectly just and fair as far as the basis of population was concerned, to make the city of New York, a judicial district by itself, being one-eighth of the population of the whole State. Now, if the present adaptation by the committee of the old plan, is not to be gloated over as a partisan device; to take this distribution in the year 1867, based on and very slightly varied from the distribution made by the Legislature in 1847, is to say the least of it, a bald anachronism. You might as well take that plan of judicial division of the State, that political mummy wrapped up in the cerements of the census of 1845, and try to galvanize it into life for the next ten years by the political wand of a bare majority of this Convention, as to undertake to reconcile the people of the State of New York with a fresh distribution of its population and wealth based on that ancient and effete scheme. Sir, I have been at some pains to examine the exact relation which the population, native, alien and colored, bears in the whole State to the several districts, as proposed by the committee. My time will not allow me to go over all these figures; I will put the latter of these charts, as a part of my remarks, in the possession of the Convention, or place both immediately at the service of any gentleman who desires to ascertain that the figures which I have given are arithmetically correct. It will be sufficient for me, sir, to give you some of the principal details to show the utter injustice, the gross injustice, of the plan of this committee. You take three million eight hundred and thirty-two thousand as the population of the State and divide it by eight, and you have four hundred and seventy-nine thousand of people to be represented by four Senators, or nearly one hundred and twenty thousand people to one Senator. Thus, with reference to the population of the city of New York, the least that could be done in accordance with the present census, unjust and unfair as it was, is to give the city of New York six Senators, and when you come to the second district the least you can do for that is to give it five Senators. So that to do justice in the scheme as presented by the committee, you must not only enlarge the entire count of the Senate by two more, making it thirty-five, but you must give the first and second districts eleven senators to represent

them; and this without any correction of the inaccuracies of the census itself. But if gentlemen want to be satisfied that the injustice of this thing will be resented by the tax payers of the State let them look, I pray them, at how the tax-rate stands as compared with rates of representation. You take the sixth and seventh districts of this State as in the plan of this committee, and the sum total of this property is two hundred and twenty-five millions, a trifle more than that of the assessed valuation of the property of the second district. And so it is, sir, with the fourth and fifth. Yet according to this plan, the fourth up to the seventh districts are to have sixteen Senators while the county of Kings with its associates under the plan, paying one-half of the amount of taxes which these four senate districts do is to have but four Senators. You give these western districts a representation in the Senate of sixteen and you give the eastern-most district a representation of four. That is to say you make the tax payers in the second district pay double the amount of taxes which those in all these other districts do, while the farmer get only one-half of the representation. The first and second districts are assessed for eight hundred and sixteen millions—more than half of all the property returned by the census of the State. Yet these two districts will have, according the plan of the committee, nine representatives in the Senate, a trifle over one-fourth of the whole, while they pay more than half of the entire taxes that support the government of the State. Again, if you look at the map, you will find that the first district is composed of one county, the second of five, the third of eight, the fourth of eleven, the fifth of seven, the sixth of twelve, the seventh and eighth of eight each, so that there is no possibility of supporting the scheme as presented by the committee, either on any equal rate for the grouping of counties, or a just division of the payment of the taxes. Now, sir, how is it that the committee propose to justify their scheme before your body? Why, they tell you that they have given you the basis of citizen population, and they pretend to say that this ought to be justified as in accordance with the old practice of this State. I cannot but regard it, sir, as a fresh experiment, an *experimentum in corpore vili*, a party trick upon a despised part of our population, an attempt to trample out the right to representation of the alien born inhabitants of the State. And yet we have on this floor gentlemen who are accredited for their eloquence, for their judicial position and for the colossal fortunes which they have made, which indicate the earnestness and the integrity with which they have pursued their several callings among the citizens of the State, we have them here on this floor—the sons of a population so despised that the gentlemen of this committee will not allow them to have any basis in the representative inhabitancy of the State. At the same time the gentlemen say they do not hide the fact that they have intended to and do include the colored population of the State.

Mr. MERRITT—Will the gentleman allow me to ask a question?

Mr. CONGER—I have not the time; but

I anticipate what the gentleman would say, for he made an explanation before the committee, when he attempted to hide this great injustice to the inhabitants of the State on the plea that it was in the Constitution of 1846, and the Constitution of 1821. I do not so read the design of either of these Constitutions. The Constitution reserves from the basis aliens, paupers and persons of color not taxed. That is the sheer distinction. It is not a matter of mere alienage of birth, but it is freedom from taxation which practically operates for their exception from the basis. If the gentlemen want any further justification of the ideas I seek to establish, let them turn to the Constitution of the United States. What is the basis of representation there? Under the old Constitution it was a basis of representation according to numbers, with the exception of three-fifths of a certain class of persons and Indians not taxed. But now that the three-fifths representation of slaves in the Constitution is abolished, the Committee come into this body and ask for a basis of representation on nine-tenths of the white population of this State. Turn to the fourteenth article of the proposed amendment to the Constitution and what have you there? You have there a basis of representation on numbers excluding Indians not taxed, and no man can pretend to say that it ever was in the intention of the founders of the Constitution of 1821 to exclude any portion of the population from the basis of representation, except on this justification, that they were not to be taxed. Now, the last census might have disclosed to the committee, had they taken the pains to examine it, that of the colored population (whose numbers I gave the other night as less than 45,000), four-fifths were put down as not taxed; and yet, under the new rule by which they are to be admitted on the basis of a common citizenship, they are brought in here to be included in the main class of inhabitants that form the basis of representation, while those who are of foreign birth are excluded. Now, the great injustice, and the great enormity of the application of this new and invidious rule is, that in taking the census there was no effort made to designate among the alien population of the State those who were taxed on property acquired and those who were not taxed because of no property accumulated. The gentlemen here maintain the position that they may exclude all who are accounted as aliens under that census. Four hundred thousand souls out of the population of the State of New York, when they know that of late many thousands have fulfilled their first declaration of intention to become citizens, and when they know that by the laws of the State a man who once declares his intentions to become a citizen is not only made subject to military duty but is then and for the first time permitted to hold real estate and is thus liable to be taxed for his property. Do the gentlemen of the committee mean to tell this body that four hundred thousand souls of foreign birth in the State of New York are not now practically taxed and ought not to be taxed? I would not so libel the authors of the Constitution of 1821 as to say that they meant to exclude the aliens on the ground of mere alienage, and not on the ground that they had not acquired any property to tax. Moreover I am free to say that I am opposed to any shifting

series of representation. You have one set of districts this year, in ten years you have another set of districts. You take small counties and link them on to larger counties, they are mere make weights in the representation. Why should they not have a fixity, an abiding status with their fellow-counties? Why would it not be much better, if you will have large districts in the State, to declare that there shall be a certain number and that that number shall be fixed, and the boundaries fixed, and that the representation from time to time shall be in accordance with the population? It may be, sir, that in the course of this debate some gentleman may see fit to propose, and if he does he will easily at this day justify his argument, making property as a tax paying element in the constituency have some share in the basis of representation. I do not believe it is wise to have the Senate represent only population, by or on a new combination of the identical people who in more numerous groupings on a smaller scale constitute the lower house who represent nothing but the same people. It is a departure from the wisdom of our forefathers. But I have not time to elaborate that idea. Now as I have only two minutes, I perceive by this clock, I have to say that you are bound by the sense of duty you owe to yourselves to do justice at least to the democratic districts of the State. It never was known in the history of that party when in power that they ever attempted to lay the basis of institutions to last for years, on any principle other than that which was founded on equal justice to all. And to attempt now to take this advantage of the city of New York—a city that is destined in a few years to be the commercial metropolis of the world when the Pacific railroad is built, to be the center of the carrying trade of the world, and which will contain within ten years (the limit you have fixed by this proposition) a population of one million and a half of souls—I say it is a shame and a disgrace to attempt to cheat them of their fair representation in the higher council chamber of the State; and I do not think the constituency of New York will give credit to the proposition of my associate from Westchester [Mr. Greeley], who proposes forty-five Senators in all, and under this very beautiful and delicate clause—"with due regard to the integrity of the counties"—cuts off the city of New York with three Senators, leaving that population which represents one-fifth of the tax-paying contributions to the exchequer of the State to have but one-fifteenth part in the representation of the Senate of the State.

*Summary of Eight Senate Districts, as prepared by the Committee.*

Districts.	No. counties in each.	POPULATION.			Area in sq. miles.	Property equalized valuation in dollars.
		Total.	Alien.	Col'd.		
1	1	726,886	151,836	9,943	22	\$906,784,855
2	5	541,362	76,908	12,602	1,710	209,425,023
3	8	411,424	29,558	8,844	4,777	142,033,569
4	11	464,747	38,684	2,657	11,647	113,367,289
5	7	437,134	27,902	2,268	6,488	106,616,708
6	12	409,886	10,470	3,815	8,069	94,767,850
7	8	401,217	23,776	2,668	4,979	130,771,118
8	8	440,187	38,330	1,421	6,122	127,553,748



Mr. SHERMAN—It is hard, Mr. Chairman, to suit gentlemen, who are hard to be suited. This must be apparent to any one who has given attention to the proceedings of this body for the last six weeks. If every man could have his favorite idea worked into the body of the Constitution we are framing, we should have no difficulty in arriving at a harmonious conclusion. But what sort of a work would we have to submit to the people? Do you think sir, that the medley of Constitution, detail law hobby horse, stump speech and nonsense thus evoked would be acceptable? Probably not. And yet to such an end are we likely to drift unless we are prepared to yield more of pride of opinion, more of partisan feeling and more of individual prejudice than we have yet done. Committees have been appointed to whom have been referred subjects of constitutional adjustment. After weeks of patient, even anxious investigation, they have submitted their deliberative judgment to the Convention; but for that judgment it has been quite too common to substitute the crude and hasty ideas of individuals. Let us see that we do not fall into this error in the consideration of the subject before us. I know it is not in human nature for all men to yield to one man, nor for bodies of men to yield to other bodies, especially those numerically weaker. Nor is it human nature to submit even to what is fair when it runs counter to interest. Therefore, I am not surprised that the report of the Committee on Organization of the Legislature fails to be received with that universal acclaim to which its merits entitle it. Complaint is made particularly of the apportionment of Senate districts reported by the committee, and it is to this branch of the subject I will confine my remarks. The essence of these complaints is that the committee have failed to make a sufficient number of democratic districts. The committee must plead in justification that they did not, in the adjustment of this question, regard it their province to consider partisan bearings. Having reached the conclusion that the public good would be promoted by the division of the State into eight large districts for the choice of Senators, they next sought how these should be best framed. They thought that the ruling considerations should be geographical connections, convenient lines of travel, and the general currents of business, and that these should be attained with as little disturbance as possible of existing relations. Tested by these requisites, the plan of the committee will bear close criticism. The general idea has been to make the senate districts conform as nearly as possible to the existing judicial districts. If it had been practical, they would have recommended the adoption of these districts without change. But this was impossible on account of the greater proportionate increase of population in the south-eastern portions of the State, and the consequent gain of Senators to that section. This rendered necessary, to a certain extent, a dislocation of the present second and third districts. The excess of representative population in New York was very fairly provided for by giving to that district an additional Senator. The remaining island counties not having sufficient population to entitle them to four Sen-

ators, it became necessary to add another county, and that was, inevitably, Westchester, as that was the only county remaining, of contiguous territory. It is true this gave the district some excess of population, but this excess was not as much as would have been the deficiency had Westchester been omitted. If there was an evil at all in the case, the committee have chosen the least. In regard to the proposed third district, it is safe to say that it is hardly possible to form anywhere in the State a district more convenient in respect to geographical lines and the facility of inter-communication. It is composed wholly of adjacent counties on the Hudson river. The inhabitants are mainly of the same origin, and are closely connected by ties of blood, business and local interest. Two parallel lines of railroad and the chief navigable river of the State traverse it from end to end, and from the most remote part of the district to a common center is but a few hours' journey at the most. Yet it is of this district that chief complaint is made. The fourth district, as proposed by the committee is the present fourth judicial district with the subtraction of Montgomery and the addition of Albany. This arrangement is also complained of. If gentlemen will carefully go over this whole subject by the lights of geography and arithmetic, they will see that it could not well have been different. The increase of population in the first and second districts necessarily forced the third into more northerly connections, and either Albany or Rensselaer must dissolve its relations with the third district, in order to avoid a heavy excess of population in that district or a corresponding deficiency in the fourth. The committee deeming that the district would be better shaped by embracing Albany than by passing by it to include Rensselaer, decided to attach the former county to this district. No material political relations were believed to be affected by this arrangement. It is true that at the last general election, the counties embraced in the third district gave a republican majority, but this was an exceptional result—an accident, which I am sorry to believe, will not be often repeated. The proposed fifth district is the present fifth judicial district, with the addition of Montgomery; an arrangement so fair and correct that no one, I believe has yet ventured to find fault with it. The assignment of the counties of Schoharie and Sullivan to the sixth district was necessary not only to secure the compactness of the third, but to give to the sixth its requisite quota of population. The communications of Sullivan with the other counties of the sixth district are more convenient than with the third, and the completion of the Albany and Susquehanna railroad, which will be secured long before this arrangement can go into effect, will make the connections of that county with the body of the district as convenient as could be desired. The New York and Erie railroad traverses the district the whole length, from east to west, and lateral lines of railroad extend from this into every county of the district except Madison, where similar connections are now in progress. The proposed seventh and eighth districts are identical with the present judicial districts of

those numbers, and as no conceivable amount of gerrymandering could change the political complexion of either of these or of any of the districts adjoining, I presume this arrangement will not be complained of. This is the plan which the gentleman from Richmond [Mr. E. Brooks] and the gentleman from Rockland [Mr. Conger] so harshly criticise. Would it not be well for gentlemen who complain to propose a scheme which, as a whole, would be better? There is not it is true, entire equality of population in the districts; but there is no such disparity as would work real injustice or even inconvenience. Compactness of territory and convenience of communication have been regarded, and properly so, as of more importance than exact equality of population. The political bearings of the proposed districts have been alluded to. Though this consideration did not enter into the judgment of the committee, it has crept into this discussion, and may, therefore, be referred to in its practical aspect. Of the proposed eight districts there would probably be three democratic and five republican. This would give to the democrats thirteen and to the republicans twenty Senators. Under the present system of single districts, the democrats have five and the republicans twenty-seven senators. This ought to dispose of the complaint that the plan recommended by the committee does injustice to the democratic party. If that party cannot avail itself of its nearly equal aggregate strength in the State with the republicans, to secure a proportionate number of Senators, the difficulty must be other than one of purpose. It lies really in the accident of location. The great democratic preponderance is in one corner of the State, while the republican strength lies broadcast over the whole interior, in such a manner that no division could be made without the grossest and most outrageous injustice that would give republicans less than five districts. If the fourth, sixth and fourteenth wards of New York could be attached to the Fourth district, in place of the counties of Washington, Essex and Saratoga, it is true the republican preponderance in St. Lawrence might be overcome, and a democratic district established where there is now a republican one, especially if the plan of "repeaters" referred to the other day by the gentleman from Westchester [Mr. Greeley], and other favorite election appliances peculiar to New York city could be transferred to that district; but unless some earthquake system like this be adopted, no democratic district could be by any possibility established north or west of Albany. I will simply say in conclusion, that if it be the sense of the Convention, that there should be eight senate districts, the plan of the committee is a fair and practical one. Either it or a wholly new scheme must be adopted; for a change in one district involves a change in some other district; and the continuity once broken, a general rebuilding becomes necessary; mere patch-work will not suffice.

Mr. BARKER — The question before the committee is, whether the present arrangement of electing Senators by single districts shall be continued, or that of electing by large districts, as recommended in the report, and provided by the

Constitution prior to 1846, shall prevail. Upon that proposition I desire to ask the attention of the committee for a few moments. The change that has been recommended by the committee in this respect is not altogether fundamental. It is necessarily based upon observation and experience, and unless it can be demonstrated that some advantage is gained by the change, then I apprehend this Convention will not recommend a return to the system of large districts. All modern representative governments divide the legislative branch into two departments, and for the reason that the people being represented through the Legislature may by their own votes have a check upon the legislative action of their own servants, and hence the two departments are created. It is that each may be independent in its character, each have a check upon the other, and prevent hasty and unwise legislation and the maturing of corrupt schemes. Now, this is better effected by the plan as reported by the committee than by adhering to the present system; for to have the full advantage of the plan which I have stated, these two bodies must be elected at different times. If they are elected upon the same day and by the same constituency, there is nothing gained by dividing them into two chambers; they may as well be in one body and deliberate together, as to be separate. Hence, they should be elected by a different constituency, at different times, and have a different tenure of office. I submit that by the single district system these advantages are practically lost. The constituencies are nearly the same as those of the Assembly, they are often nominated by the influence of the same public men, are controlled by the same political considerations, and are elected at the same election every other year, and in spirit, in policy and effect, the same as if the legislative power was vested in one legislative body. It is suggested by the gentleman from Cortland [Mr. Ballard], who offers this amendment, that the people are not directly represented if we go back to these large districts. I apprehend that is a simple fallacy. It is a common statement to make; it is pleasant to one's own lips; it is sometimes a satisfactory reason to one's own self as an argument, to state so popular a proposition; but is not the legislative department of this State when created under the system proposed by the committee a direct representation of the people? It is in every practical sense and is satisfactory to the people. I submit further that another advantage that is gained by the State is in having experience and intelligence in the members. That is all that a free people need to secure wise legislation, and to raise the legislative department of the government above the often repeated, and as I think, unfounded and unsustained charge of corruption against legislators, and I submit that we have had experience enough to demonstrate that a man must be in public life before he is fully competent to discharge all the duties of a public position. No judge is ripe in his experience and entirely commands the respect of the people, without experience, no lawyer gains reputation without experience, no financier is successful without experience, and in my judgment, the State of

fourth district with the county of St. Lawrence. It has been well said by the delegate from Rensselaer [Mr. M. I. Townsend], that those two counties, so far removed from each other in the extreme opposite portions of the State, and having very little communication cannot be so competent to choose candidates who may be presented on one side or the other. The county of Albany, a democratic county, is thus placed in the fourth district and overwhelmed by the political majority on the other side, when, by being left in the third district, it would much better equalize the population, and it would at least be left to a fairer chance as far as the result is concerned. I complain, therefore, that Albany county is placed in the fourth district, and ask that it may be restored to the third, where it has been in the past, in the judicial district, and in former times in the senatorial district. Now, if a proper equalization can be made of these districts, I should certainly prefer this district system, upon the general idea of the plan reported. I do not see myself where the difficulty is in taking the map of the State of New York, and the result of the census, and dividing it up into either eight or ten districts, fairly and equally, without any great disparity certainly between the different districts. I believe it could be done, but it can only be done now by referring it back to the committee for that purpose. I do not believe it can be done by amendments offered here. As between these as presented, I shall adhere to the present single district system, unless the plan proposed by the delegate from Westchester [Mr. Greeley] shall be shown to be practical and feasible, and in that case I shall most certainly support it. If any system can be devised which will give a just and proper representation to the minority, I will support it, and I believe the time is not far distant when a system like that will receive the support of all political parties. I think unless some step is taken to make this system more equal and more just in its results, I will have no other way but to fall back on the single district system.

Mr. GERRY — I move the committee do now rise, report progress and ask leave to sit again.

SEVERAL DELEGATES — "Oh no!" "Oh no!"

The question was put on the motion of Mr. Gerry, and on a division it was declared lost.

Mr. FULLERTON — I am opposed to dividing the State into only eight senatorial districts, but do not propose even to attempt to make a speech on the subject. I will content myself with merely stating the grounds of such opposition. By the Constitution of 1846, the State was divided into thirty-two senatorial districts. I believe this division has proved satisfactory to the people. At least I do not understand that any complaint has come from them to this Convention against it, or that any prevails to any considerable extent. While senatorial districts may be too small, it is equally true that they may be too large, and the endeavor should be to fix upon a medium between the two extremes. When a division is made that answers the convenience and meets the approbation of the mass of the electors of the State, that division should be adhered to. Such a division we now have, and until it can be

demonstrated that it is either complained of by the people, or works to the prejudice of the interests of the State, there should be no radical departure from it. My second objection consists in the fact that by large districts, such as are recommended by the committee, the Senator is too far removed from the knowledge of the constituency which elects him. Representation should always be brought as nearly home to the represented as may be practicable. The people always desire to know something of those who are presented to them for their suffrages. When a candidate for any office comes before them for their support, they desire an acquaintance with his standing as a man, and his qualifications and fitness for the office he seeks. And when a senatorial candidate is presented to them, they ought to be able to judge of his ability to represent them as one of the law-makers of the State. This can only be so to a very limited extent under the system of divisions recommended by the committee. Again, I object because it is going back to a plan of division that has once been tried, and most emphatically condemned. A change from eight to thirty-two senatorial districts was made by the Convention of 1846, and, according to my understanding, that change was made because the plan of large senatorial districts had been very universally condemned. It had been tried, found fault with by the people, and many of the delegates to the Convention of 1846 came here under instructions to favor single senatorial districts. And, as I understand it, the change was demanded because the old plan was too inconvenient, and because the candidate and his constituents were too far removed from each other. I submit, therefore, that it would be unwise to adopt the recommendation of the committee and go back to a plan or system that has once been tried and rejected.

Mr. ALVORD — I do not propose, at this time, to enter largely into a discussion of the question before the committee. I am decidedly, so far as I myself am concerned, in favor of a small number of districts. I believe it has worked admirably in the past history of this State, and that it has been a departure in the wrong direction since we have adopted the single district system. I had hoped that I would be enabled to offer a proposition which seems to me entirely fair, and when the opportunity shall arrive for so doing, I shall endeavor to bring it before the Convention for its consideration. My idea simply is this, we should make eight senatorial districts in this State, making the city of New York one of these districts, calling it the first. It is entitled by its population and position to a representation in the Senate of six senators, against four each for the other seven districts, and that we should leave it to the Legislature of the State in future to settle the boundaries of the other seven districts. I trust, therefore, with this in view that the committee will think and reflect upon this matter before they come to any decision as antagonistic to the idea of eight rather than thirty-two or more single districts, and it is for this purpose only that I have thrown out this idea at this time, because I think it is entitled to a very considerable consideration, and it will relieve a great many men here of any ap-



the direction of the Legislature in the year 1855, and at the end of every ten years thereafter; and the said districts shall be so altered by the Legislature at the first session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens and persons of color not taxed." It means aliens not taxed, and there can be no other construction given to that phrase.

Mr. RATHBUN—I wish to inquire of the gentleman if he observed the comma which is there after the word "aliens." He seemed to read as though there was none there.

Mr. SCHOONMAKER—No, sir, there is no comma. In conformity to that basis we find in our statistical tables the enumeration made in 1865 taken of the inhabitants excluding persons not taxed only. I have gone through with the apportionment made by the committee upon the basis of the population excluding persons not taxed only, and I call the attention of the committee to the result of it. Upon that basis New York, with five Senators, has a surplus of 142,607; the second district upon that basis of population, persons not taxed only, has a surplus of 70,299; the third district has a deficiency of 55,570; the fourth district has a surplus of 2,265; the fifth district has a deficiency of 24,842.

Mr. COOKE—May I ask the gentleman a question? I want to know what the gentleman's ratio is?

Mr. SCHOONMAKER—I take the population, excluding persons not taxed, at about 115,000, as the Senate ratio; 575,000 as the ratio for five Senators, and 460,000 for four Senators. The fifth senate district has a deficiency of 24,842; the sixth district has a deficiency of 52,863; the seventh senate district has a deficiency of 60,257, and the eighth senate district a deficiency of 23,301. The population of the second senate district exceeds the population of the third senate district by 125,769; it exceeds the population of the fourth senate district by 68,034; it exceeds the population of the fifth district by 95,141; it exceeds the population of the sixth district by 123,162; it exceeds the population of the seventh district by 130,556, and it exceeds the population of the eighth senate district by 93,600. I ask where is the equality in that apportionment? I had always supposed that representation should be made equal, as near as may be, and here we see that the second senate district exceeds some of the other of the ratio senate districts to an extent entitling them to an additional Senator. Take the population as claimed by the committee, excluding aliens only. There we find that the first senate district has an excess of 55,298; the second has an excess of 48,669; the third has a deficiency of 33,944; the fourth has an excess of 9,833; the fifth has a deficiency of 6,928; the sixth has a deficiency of 16,925; the seventh has a deficiency of 40,049; and the eighth has a deficiency of 16,985. The population of the second senatorial district, upon the basis adopted by the committee, exceeds the population of the third senatorial district by 82,613; it exceeds the population of the fourth district by 38,836; it exceeds the population of the fifth district by 55,597; it

exceeds the population of the sixth district by 65,654; and that of the seventh by 88,718, and that of the eighth district by 65,654. Now, Mr. President, I cannot conceive why this committee should go to the judicial district apportionment for the purpose of apportioning the State in reference to the Senators. That is a division that was not made originally in reference to population. It was made for a judicial district, and the law was not made in reference to population, but it was rather in reference to the convenience of the suitors at court, and the convenience of the judges, than in reference to the population. Why, then, should the committee take that apportionment and make such inequality in representation throughout the State? It appears to me, sir, that if this report is to be adopted at all, and the Convention is to regulate the senate districts, it should be referred back to the committee for re-apportionment.

Mr. GREELEY—I would ask the gentleman to allow me to make a remark which may shorten this discussion. I will say, though not at liberty to speak for the political majority in Westchester, that if this apportionment of eight senate districts stands, I shall on behalf of the republicans of Westchester county very (and I know I represent their sentiments) earnestly ask that our county be placed in the third district instead of the second. It will be an advantage to us politically, and I trust this Convention will not keep us out.

Mr. SCHOONMAKER—I care not where the gentleman intends to locate himself; I am engaged now in the discussion of the inequality of the senatorial districts. We look at these senatorial districts throughout every portion of the State, and we find that there is an inequality everywhere. In the western portion of the State they are small. Take the eastern portion of the State and they are large. As between the two propositions before the committee, the one is for the old system of thirty-two single senatorial districts, and the other is for eight large senatorial districts. I myself would prefer the division of the State into eight or ten senatorial districts and have four Senators from each, but if this apportionment is to stand, as between this proposition and the one for thirty-two single senatorial districts, I shall go for that rather than take this improper and unequal apportionment.

Mr. M. I. TOWNSEND—I find myself unable to concur with the committee who have had this question under consideration, and reported their views to the Convention. But although differing from the committee, I do not concur in any of the remarks which have been made disparaging the conduct of these gentlemen. I have no doubt they discharged their duty with a high sense of the obligation that has rested upon them. They have discussed the subject I have no doubt among themselves faithfully, and have honestly and honorably reported the result of their deliberations as resting in their own mind. But the report of the committee is not conclusive upon the Convention however much the Convention may respect the gentlemen who make it. And with that view I hold myself at liberty to adopt my own conclusions, the report notwithstanding, and they are

fourth district with the county of St. Lawrence. It has been well said by the delegate from Rensselaer [Mr. M. I. Townsend], that those two counties, so far removed from each other in the extreme opposite portions of the State, and having very little communication cannot be so competent to choose candidates who may be presented on one side or the other. The county of Albany, a democratic county, is thus placed in the fourth district and overwhelmed by the political majority on the other side, when, by being left in the third district, it would much better equalize the population, and it would at least be left to a fairer chance as far as the result is concerned. I complain, therefore, that Albany county is placed in the fourth district, and ask that it may be restored to the third, where it has been in the past, in the judicial district, and in former times in the senatorial district. Now, if a proper equalization can be made of these districts, I should certainly prefer this district system, upon the general idea of the plan reported. I do not see myself where the difficulty is in taking the map of the State of New York, and the result of the census, and dividing it up into either eight or ten districts, fairly and equally, without any great disparity certainly between the different districts. I believe it could be done, but it can only be done now by referring it back to the committee for that purpose. I do not believe it can be done by amendments offered here. As between these as presented, I shall adhere to the present single district system, unless the plan proposed by the delegate from Westchester [Mr. Greeley] shall be shown to be practical and feasible, and in that case I shall most certainly support it. If any system can be devised which will give a just and proper representation to the minority, I will support it, and I believe the time is not far distant when a system like that will receive the support of all political parties. I think unless some step is taken to make this system more equal and more just in its results, I will have no other way but to fall back on the single district system.

Mr. GERRY — I move the committee do now rise, report progress and ask leave to sit again.

SEVERAL DELEGATES — "Oh no!" "Oh no!"

The question was put on the motion of Mr. Gerry, and on a division it was declared lost.

Mr. FULLERTON — I am opposed to dividing the State into only eight senatorial districts, but do not propose even to attempt to make a speech on the subject. I will content myself with merely stating the grounds of such opposition. By the Constitution of 1846, the State was divided into thirty-two senatorial districts. I believe this division has proved satisfactory to the people. At least I do not understand that any complaint has come from them to this Convention against it, or that any prevails to any considerable extent. While senatorial districts may be too small, it is equally true that they may be too large, and the endeavor should be to fix upon a medium between the two extremes. When a division is made that answers the convenience and meets the approbation of the mass of the electors of the State, that division should be adhered to. Such a division we now have, and until it can be

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prehension of an undue representation or want of representation on the part of the city of New York, and leave the division of the balance of the State to be determined by the action of the Legislature in future, when they can determine it better than we can at the present time.

Mr. E. A. BROWN—I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. E. A. Brown, and it was declared carried, on a division, by a vote of 51 to 42.

Whereupon the committee rose and the PRESIDENT *pro tem.* Mr. ALVORD resumed the Chair in Convention.

Mr. ARCHER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization etc., had made some progress therein, but not having gone through therewith had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave and it was declared carried.

Mr. CLINTON—I rise simply to ask leave of absence to-morrow for one day.

There being no objection leave was granted.

On motion of Mr. WEED, the Convention adjourned.

#### FRIDAY, August 2, 1867.

The Convention met at 10 o'clock A. M. The PRESIDENT *pro tem.* Mr. ALVORD, in the Chair.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. BARKER—I rise to a question of privilege. I think this is the proper time to call the attention of the Convention to a question of privilege which not only relates to me personally but to most of the members of this Convention. It is remissness on the part of the committees in not making their reports to this Convention. It is well known, or at least the idea is entertained, that the committee will soon dispose of the pending proposition and then we are to take up another which cannot in any event have been reported but a short time to this Convention, and I believe it is a just cause of complaint that many of the committees have not made their report, so that the members of this Convention could know what proposition they are to consider, and that their minds might be maturing upon these subjects. When we dispose of the pending proposition, what is to be the next report? What member of the Convention can come to any conclusion upon a proposition upon which he is called upon to vote. I know that three or four committees have reported, but there are yet some twenty-two reports to be made to this Convention, and with all due deference to the members of the respective committees, I submit they are remiss in their duties. This is my question of privilege, and I hope some action will be taken by which the Convention will call upon the members of the committees to be more prompt in the discharge of their duties.

Mr. E. BROOKS—If this is to be regarded as a question of privilege—

The PRESIDENT *pro tem.*—The Chair is of opinion it is not.

Mr. E. BROOKS—I ask permission of the Convention to say a word in reply to the gentleman who has just taken his seat. If this is to be regarded as a question of privilege, I respectfully submit that it is the Convention itself which has been remiss in its duties, rather than the respective standing committees of the Convention. You vote that we shall meet at ten o'clock in the morning, and then again at four o'clock in the afternoon, and you have established a rule that we shall meet here also at half-past seven o'clock in the evening. With the long sessions that have been in this body during the three weeks past, it is physically impossible for the committees to meet and enter upon the proper discharge of the great interests committed to them. The fault, therefore, is with the Convention rather than with the committees.

Mr. L. W. RUSSELL presented the petition of A. Phillips, of Morristown, St. Lawrence county, asking for a provision in the Constitution prohibiting the donations of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. L. W. RUSSELL also presented the petition of Rev. O. Holmes, Marvin Holt, Emery Alexander and other citizens of De Kalb, St. Lawrence county, on the same subject.

Which took the same reference.

Mr. C. C. DWIGHT presented the petition of Dr. J. D. Button and forty-seven others, citizens of Cayuga county, on the same subject.

Which took the same reference.

Mr. A. F. ALLEN presented the petition of E. Mills and forty-five others on the same subject.

Which took the same reference.

Mr. CORBETT presented the petition of citizens of Spafford, Onondaga county on the same subject.

Which took the same reference.

Mr. HADLEY presented the petition of A. R. Long, and one hundred others, citizens of Penn Yan, Yates county, on the same subject.

Which took the same reference.

Mr. SCHOONMAKER presented the petition of John G. Mead, and others, of Schenectady, on the same subject.

Which took the same reference.

Mr. CARPENTER presented the petition of Rev. A. H. Seely, and others, of Dutchess county, on the same subject.

Which took the same reference.

Mr. CLARK presented the petition of seventy-four inhabitants of Livingston county, on the same subject.

Which took the same reference.

Mr. BAKER presented the petition of J. W. Elkins, and fifty-eight others, citizens and tax payers of Salem, Washington county, on the same subject.

Which took the same reference.

Mr. GOULD presented the petition of ninety-seven citizens of Matteawan, Dutchess county, on the same subject.

Which took the same reference.

Mr. GREELEY presented the petition of ex-



Mayor Hall, and several hundred others, citizens of Brooklyn, on the same subject.

Which took the same reference.

Mr. GREELEY also presented the petition of J. N. Stearns, and several hundred others, citizens of Kings county; also petition of E. L. Evans and others, citizens of New York city, praying for the submission of a separate clause prohibiting the sale of intoxicating liquors as a beverage.

The petitions were referred to the Committee on Adulterated Liquors.

Mr. LEE presented the petition of Zachariah Allpert, and fifteen others, citizens of Scriba, Oswego county; also petition of D. D. Davis, and seventy-nine others, of Hannibal, Oswego county, asking for a provision in the Constitution prohibiting the donations of public money to sectarian institutions.

The petitions were referred to the Committee on the Powers and Duties of the Legislature.

Mr. DUGANNE presented the petition of ex-Governor King, and one hundred and nineteen others, on the same subject.

Which took the same reference.

Mr. STRATTON presented the petition of Chas. Johnson, and one hundred and five others, citizens of the city of New York, asking that the Legislature be prohibited from passing other than general laws on the subjects of the traffic in fermented wines and liquors, and for the maintenance of public order and morality.

Which was referred to the Committee on Adulterated Liquors.

Mr. GROSS presented several petitions from the citizens of Poughkeepsie against prohibitory legislation and in favor of uniform laws, and the regulation of the trade in fermented liquors and wines.

The petitions were referred to the Committee on Adulterated Liquors.

Mr. DUGANNE presented the petition of Daniel P. Jones and one hundred and eighteen others, asking for a provision in the Constitution prohibiting the donations of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BECKWITH—I wish to ask leave of absence for ten days in consequence of the sickness of my eldest son.

There being no objection, leave was granted.

Mr. GRANT—I desire to ask leave of absence for myself for three days, on account of business engagements.

There being no objection, leave was granted.

Mr. KERNAN—I ask leave of absence for Mr. Ferry for an indefinite period. I think as county judge he is required to hold court next week. I ask leave of absence for him for that reason.

There being no objection, leave was granted.

Mr. KRUM—I ask leave of absence for my colleague, Mr. Miller, who is afflicted with rheumatism and not able to be here. I ask leave of absence for him until Tuesday morning.

There being no objection, leave was granted.

Mr. M. H. LAWRENCE—I ask leave of absence until Monday evening.

There being no objection, leave was granted.

Mr. BARNARD—I ask leave of absence until

Tuesday morning. My duties as treasurer of a society require me to be in New York to-morrow.

There being no objection, leave was granted.

Mr. BELL presented the petition of Alva Washburn and eighteen others, citizens of Brownville, Jefferson county, asking for a provision in the Constitution to secure to the people of this State "The right to take and catch fish in the international waters bordering on this State, and dispose of the same."

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. MASTEN presented the petition of John Percy, upon bribery and official corruption.

Which was referred to the Committee on the Suppression of Official Corruption.

Mr. E. P. BROOKS presented the petition of S. Chapman and others, of Steuben county, asking for a provision in the Constitution prohibiting the donation of public money to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. CLINTON—It is necessary that I should be absent to-morrow and Monday; I therefore ask leave of absence for those two days.

There being no objection, leave was granted.

Mr. BAKER—I ask leave of absence for myself for to-morrow, in consequence of professional business that I am obliged to attend.

There being no objection, leave was granted.

Mr. COOKE—I ask leave of absence for to-morrow, on account of unavoidable engagements.

There being no objection, leave was granted.

Mr. DUGANNE—I ask leave of absence from to-night until Monday morning.

Mr. GREELEY—I object.

Mr. DUGANNE—I would state the fact that there has been sickness in my family for the last week; I have been endeavoring to get away; I wish to be excused on that ground.

The question was put upon granting Mr. Duganne leave of absence, and it was declared carried.

Mr. C. L. ALLEN, from the Committee on the Governor, Lieutenant-Governor, etc., submitted the following report:

The standing Committee on the Governor and Lieutenant-Governor, their election, tenure of office, compensation, powers and duties, except as otherwise referred, respectfully report the following article as the result of their deliberations:

They have not deemed it necessary or advisable to recommend many amendments to article 4 of the existing Constitution; believing that no very essential change is demanded, except in such particulars as they have designated.

They have accordingly submitted copies of the first, second, third, sixth and seventh sections of that article, and are in favor of their entire adoption. They prefer to use language as far as practicable, which has been settled and approved by long and well established usage and judicial construction, rather than to adopt a new and unsettled phraseology which would not be so well calculated to secure the continued existence of provisions which they have unanimously approved.

They have proposed to amend the fourth section, by providing that the compensation of the Governor shall be established by law. While

your committee are fully of the opinion that the present compensation is far less than the Chief Magistrate of the Empire State should be entitled to receive, they believe it not wise or expedient to name or determine its amount in the Constitution, but have proposed that it be *first* fixed by the Legislature, at its *first* session after the adoption of this Constitution, in order that it may not be subject to the caprices and temptations of Legislative enactment, *after* the election of the successful candidate, or during his *continuance* in office.

To the section providing for the compensation of the Lieutenant-Governor, your committee have added the clause, that when the Legislature shall have determined its amount by law, he shall not receive or be entitled to receive, any additional compensation, fees or perquisites, for any other duties or services he may be required to perform, by virtue of his office, or in any other capacity. The reasons for inserting this restriction, must be perfectly obvious to every member of the Convention, and it is unnecessary to detail them here. They will be cheerfully stated, if called for in Committee of the Whole, or in the Convention.

It is proposed to amend the section relating to the veto power, by requiring a vote of two-thirds of the whole number composing each branch of the Legislature, to pass a bill notwithstanding the objections of the Governor.

By the existing Constitution, no bill can be passed, unless by the assent of a *majority* of all the members elected to each house; and yet, if the Governor shall object, each house, on a reconsideration, may approve of such bill by a vote of two-thirds of all the members present, and it will then become a law; thus, in effect, not only greatly weakening and rendering, in a manner, utterly powerless the objections of the Executive, but also virtually annulling that part of the section, requiring in the first instance a vote of a *majority* of all the members elected.

The propriety of the proposed amendment cannot be reasonably doubted, and its necessity under the alarming evils, which have existed for the last ten years, and which there is great reason to fear will continue and increase unless effectually restrained and prevented, will, in the judgment of your committee be manifestly apparent.

It will be perceived that your committee have had under consideration the resolution referred to them of Mr. Dwight, of Oneida. They have deemed it expedient, not only to incorporate the provision contemplated by the resolution, but to extend the power of the Governor so that he may approve of any part or parts of a bill, containing separate and distinct provisions, and disapprove of any other part or parts of the same bill.

It has not unfrequently been the case that bills proposing to enact wholesome and salutary laws have also contained provisions of so objectionable a character as to prevent their approval by the Governor, and thus many measures highly conducive and almost indispensable to the public welfare have been defeated, or have been preserved only by carrying with them enactments highly odious and offensive. Indeed, it is well known that obnoxious propositions have been artfully inserted in bills, for the purpose of en-

forcing their enactment, under the calculation, not often ill-founded, that honest members of the Legislature would be induced to suffer them to pass into laws, rather than to lose the benefit of the unobjectionable features.

In other instances, they have been introduced during the last stages of legislation; and amid the hurry, and confusion, and excitement, always prevailing at such a time, they have been precipitated into laws, when if they had been proposed in separate bills, they never could have received the sanction of the Legislature. The substance of the clause suggested in the referred resolution, with the addition recommended by the committee, has therefore been inserted in the eighth section. Your committee have deemed it expedient to determine that the time for signing bills shall cease with the adjournment of the Legislature, instead of leaving the power unlimited as it now is, and enabling the Governor to sign them at any time during the recess.

This amendment your committee believe they cannot recommend too strongly to the favorable consideration of the Convention. It is unnecessary to enter into details of the reasons for its expediency or propriety. They will readily commend themselves to the minds of the Convention. The requirement will not only serve as a more sure protective against all fraud and corruption, which may be attempted on the part of those interested in the passage of bills, but will no doubt greatly relieve the executive from ceaseless and incessant importunities and temptations to which the unscrupulous and designing are ever ready to resort. It will, in short, in the judgment of your committee, serve as a great additional safeguard to the interests of the State. The objection that bills passed during the last few days of the session may thus fail to become laws, can be obviated by the Legislature, and they can easily accommodate themselves in the passage of bills to this restriction. It is scarcely necessary to add that it is in harmony with the Constitution of the United States, in respect to the power of the President to sign bills passed by Congress which has always proved eminently successful, and has met with the approbation of all since the organization of the general government. With these amendments your committee respectfully submit the whole article, and recommend its adoption by the Convention.

C. L. ALLEN, *Chairman*.  
E. P. BROOKS,  
AMASA J. PARKER,  
T. T. FLAGLER,  
S. WAKEMAN,  
S. F. MILLER,  
S. B. GARVIN.

#### ARTICLE.

SECTION 1. The executive power shall be vested in a Governor who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time and for the same term.

§ 2. No person except a citizen of the United States shall be eligible to the office of Governor, nor shall any person be eligible to that office who shall not have attained the age of thirty years.

and who shall not have been five years next preceding his election, a resident within this State.

§ 3. The Governor and Lieutenant-Governor shall be elected at the time and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith by joint ballot choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

§ 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature (or the Senate only) on extraordinary occasions. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such measures to them as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall at stated times receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased or diminished after his election or during his term of office.

§ 5. In case of the impeachment of the Governor or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military forces of the State.

§ 6. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or he be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease.

§ 7. The Lieutenant-Governor shall receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased or diminished, after his election or during his term of office, and he shall not receive or be entitled to any other or further compensation, fees or perquisites for any other duties or services he may be required to perform by virtue of his office by this Constitution or by law.

§ 8. Every bill which shall have passed the

Senate and Assembly, shall, before it becomes a law, be presented to the Governor. If he approves of the bill he shall sign it. But if he disapprove of it, or of any part or parts of it containing separate and distinct provisions, he shall return it to that house in which the bill shall have originated, with his objections to the whole, or such part or parts of it as he shall disapprove, which shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration either of an entire bill or of a part or parts of said bill objected to, as the case may be, two-thirds of all the members elected to that house, shall agree to pass the whole bill, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of all the members elected to that house it shall become a law, notwithstanding the objections of the Governor. If either of the two houses shall not thus approve of the part or parts objected to, the bill containing such part or parts as shall be approved by the Governor shall without unnecessary delay, after the vote is taken on such reconsideration, be engrossed as a separate bill, and returned to the Governor for his signature. But in all such cases the votes of both house shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bills shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment prevent its return, in which case it shall not be a law. The right of the Governor to sign bills shall cease with the adjournment of the Legislature.

The report was referred to the Committee of the Whole, and ordered to be printed.

Mr. C. L. ALLEN, from the same committee, submitted the further following report:

The standing Committee on the Governor, Lieutenant-Governor, etc., to which was referred the resolution of Mr. Develin, instructing it to consider the propriety and expediency of limiting the veto power to questions of constitutionality exclusively, respectfully report; that they have had the resolution under consideration, and have come to the conclusion that it would not be wise or expedient to limit this power as proposed by the resolution. Your committee believe that it has always been regarded as one of the surest safeguards against hasty, improvident and corrupt legislation. They are decidedly of the opinion that the instances would be rare, in which measures would be adopted or bills passed, containing provisions clearly and palpably unconstitutional. But while they entertain no doubt on this subject, they are fully convinced that the veto power should not be confined to cases of such improbable occurrence and which can always be controlled by the courts. On the contrary it should be retained and preserved as a check to inconsiderate measures, which may be often hurried through the Legislature and become laws highly detrimental to the public weal.

The wisdom of the framers of the Constitutions of 1821 and 1846, in incorporating this measure



into those instruments, is clearly apparent to your committee; and the history of the Legislature of the State for the past ten years, and of the necessary and timely exercise of its salutary influence by the Executive, has served to strengthen their conviction of the correctness of the conclusion to which they have arrived.

Your committee, therefore, ask to be discharged from the further consideration of the resolution.

C. L. ALLEN, *Chairman*.

Mr. DUGANNE, from the Committee on Industrial Interests, submitted the following report:

The SECRETARY proceeded to read the report, as follows:

The Committee on Industrial Interests not otherwise referred, to whom was referred the memorial of H. C. Spaulding relative to the drainage of agricultural lands, beg leave to report: That they have duly considered the subject, and have instructed their chairman to recommend the following section to be a part of the amended Constitution, viz.:

SECTION —. The Legislature may pass laws authorizing and permitting parties owning or occupying lands, to construct agricultural drains across the lands of other parties, when such drains shall be necessary; and under proper restrictions and under proper remuneration.

And they ask to be discharged from the further consideration of the subject.

A. J. H. DUGANNE,  
EDWARD J. FARNUM,  
LESTER M. CASE,  
GIDEON WALES,  
MAGNUS GROSS,  
E. P. MORE,  
J. P. ARMSTRONG.

Mr. DUGANNE from the same committee submitted the further following report:

The SECRETARY proceeded to read the report as follows:

The Committee on Industrial Interests having considered the resolution referred to them July 9th, on the right of the people of this State to catch and take fish in certain waters of the State, beg leave respectfully to report:

That at the last session of the Legislature, an act was passed ostensibly for the preservation of "moose, wild deer, birds and fresh water fish;" and that said act, becoming a law, has injuriously affected an important industrial interest of the State, more particularly on the river St. Lawrence, whose fisheries afford employment and subsistence to not less than ten thousand persons in the county of Jefferson alone.

Your committee do not deem it proper to propose the constitutional assertion of any right which might hereafter conflict with necessary legislation for the preservation of game or regulation of fisheries at certain seasons; but, inasmuch as certain lakes and rivers of the State are so located as to be accessible for fishing purposes to the inhabitants of an alien country, as well as to our own citizens, and, in consequence of this fact, no restrictions upon our citizens can restrain aliens from taking fish in the same waters, but will only operate to give the said aliens an undue advantage over citizens of this State, your com-

mittee have unanimously directed their chairman to recommend that the following section be, in its proper place, embodied with the Constitution.

SECTION —. "The right to take and catch fish in any of the *international* waters bordering on this State, and the rivers and bays thereof, and to dispose of such fish, shall not be denied or restrained."

A. J. H. DUGANNE,  
*Chairman*.  
MAGNUS GROSS,  
EDWARD J. FARNUM,  
GIDEON WALES,  
LESTER M. CASE,  
E. P. MORE.

Mr. EVARTS—Would it be in order to move that this report and the subject be referred to the Committee on the Preamble and Bill of Rights?

The PRESIDENT *pro tem*.—The Chair is of the opinion that motion is now in order.

Mr. EVARTS—Then I move it be referred to the Committee on the Preamble and Bill of Rights.

The question was put on the motion of Mr. Evarts, and it was declared carried.

Mr. EVARTS—A reference was made by the Chair of the report from the Committee on Industrial Interests, on the subject connected with the right of drainage—that is of affinity with the right of private ways; it is a part of the bill of rights, and, if it is in order, I now move that that report shall be referred to the Committee on the Preamble and Bill of Rights. I think it will facilitate the action of the Convention.

The PRESIDENT *pro tem*.—The Chair holds that it is now in order.

Mr. DUGANNE—I will state that it was the intention of the committee that those two propositions should be referred to the Committee on the Preamble and Bill of Rights.

The question was put on the motion of Mr. Evarts, and it was declared carried.

Mr. BEADLE—The Committee on Banking and Insurance, and the standing Committee on Corporations other than Municipal, Banking and Insurance, finding in the discharge of their duties and the consideration of the subjects referred to them, that it was probable from the similarity of subjects that any separate report made by either committee was likely to trench upon or conflict the one with the other, have united in their meetings and consultations, and ask leave to make a joint report.

Mr. BALLARD, from the two several Committees on Currency, Banking and Insurance, and on Corporations other than Municipal, Banking and Insurance, submitted the following joint report:

#### ARTICLE VIII.

SECTION 1. Corporations may be formed under general laws, but shall not be created or amended by special act, except for municipal purposes. All general laws (and special acts) passed pursuant to this section, or which may have been heretofore passed, may be altered from time to time or repealed.

§ 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

and who shall not have been five years next preceding his election, a resident within this State.

§ 3. The Governor and Lieutenant-Governor shall be elected at the time and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith by joint ballot choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

§ 4. The Governor shall be commander-in-chief of the military and naval forces of the State. He shall have power to convene the Legislature (or the Senate only) on extraordinary occasions. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such measures to them as he shall judge expedient. He shall transact all necessary business with the officers of the government, civil and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall at stated times receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased or diminished after his election or during his term of office.

§ 5. In case of the impeachment of the Governor or his removal from office, death, inability to discharge the powers and duties of the said office, resignation or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State in time of war, at the head of a military force thereof, he shall continue commander-in-chief of all the military forces of the State.

§ 6. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or he be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease.

§ 7. The Lieutenant-Governor shall receive for his services a compensation to be established by law, to be first fixed by the Legislature at its first session after the adoption of this Constitution, and which compensation shall neither be increased or diminished, after his election or during his term of office, and he shall not receive or be entitled to any other or further compensation, fees or perquisites for any other duties or services he may be required to perform by virtue of his office by this Constitution or by law.

§ 8. Every bill which shall have passed the

Senate and Assembly, shall, before it becomes a law, be presented to the Governor. If he approves of the bill he shall sign it. But if he disapprove of it, or of any part or parts of it containing separate and distinct provisions, he shall return it to that house in which the bill shall have originated, with his objections to the whole, or such part or parts of it as he shall disapprove, which shall enter the objections at large on their journal and proceed to reconsider it. If after such reconsideration either of an entire bill or of a part or parts of said bill objected to, as the case may be, two-thirds of all the members elected to that house, shall agree to pass the whole bill, it shall be sent together with the objections, to the other house, by which it shall be reconsidered, and if approved by two-thirds of all the members elected to that house it shall become a law, notwithstanding the objections of the Governor. If either of the two houses shall not thus approve of the part or parts objected to, the bill containing such part or parts as shall be approved by the Governor shall without unnecessary delay, after the vote is taken on such reconsideration, be engrossed as a separate bill, and returned to the Governor for his signature. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each house respectively. If any bills shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall by their adjournment prevent its return, in which case it shall not be a law. The right of the Governor to sign bills shall cease with the adjournment of the Legislature.

The report was referred to the Committee of the Whole, and ordered to be printed.

Mr. C. L. ALLEN, from the same committee, submitted the further following report:

The standing Committee on the Governor, Lieutenant-Governor, etc., to which was referred the resolution of Mr. Develin, instructing it to consider the propriety and expediency of limiting the veto power to questions of constitutionality exclusively, respectfully report; that they have had the resolution under consideration, and have come to the conclusion that it would not be wise or expedient to limit this power as proposed by the resolution. Your committee believe that it has always been regarded as one of the surest safeguards against hasty, improvident and corrupt legislation. They are decidedly of the opinion that the instances would be rare, in which measures would be adopted or bills passed, containing provisions clearly and palpably unconstitutional. But while they entertain no doubt on this subject, they are fully convinced that the veto power should not be confined to cases of such improbable occurrence and which can always be controlled by the courts. On the contrary it should be retained and preserved as a check to inconsiderate measures, which may be often hurried through the Legislature and become laws highly detrimental to the public weal.

The wisdom of the framers of the Constitutions of 1821 and 1846, in incorporating this measure

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creations of other States, whose charters are  
pendent of our control, only when the inter-  
of the people of our State are fully secured.  
therefore, recommend that a clause be inserted in  
the Constitution in substance as follows:

"The Legislature shall provide that foreign  
corporations shall secure the performance of ob-  
ligations created in this State."

LESLIE W. RUSSELL

Albany, Aug. 2, 1867.

We concur as to the first and second propositions  
embraced in this report, but without indorsing all  
the reasons stated therein.

HOBART KRUM,  
C. V. R. LUDINGTON.

Mr. LUDINGTON—Not being present this  
morning at the meeting of the committee, I had  
not the opportunity of signing the minority report,  
in which I most heartily concur. I desire leave  
to sign it now.

The PRESIDENT *pro tem.*—The Chair is of  
opinion that the gentleman has that leave without  
requesting it at the hands of the Convention.

[Mr. Ludington then signed the report as above.]

Mr. VEEDER—On behalf of the majority of  
the Committee on Banking, Currency and Insur-  
ance, I beg leave to submit the following further  
report:

The undersigned, members of the Committee  
on Currency, Banking and Insurance, dissent from  
so much of the joint report of said committees as  
relates to section six of said report, and respect-  
fully report the following section as section six.

SECTION 6. "The stockholders in every corpora-  
tion and joint stock association for banking pur-  
poses, issuing bank notes or any kind of paper  
credits to circulate as money, shall be individually  
liable to the amount of their respective share or

shares of stock in any such corporation or associa-  
tion for all its debts and liabilities of every kind."

TRACY BEADLE,  
BENJ. N. HUNTINGTON,  
WILLIAM D. VEEDER,  
JOHN EDDY,  
WM. HITCHMAN.

Mr. LANDON gave notice that he would at a  
future day ask the adoption of the following reso-  
lution:

*Resolved*, That the previous question may be  
applied to the particular sections of an article  
or other question under consideration, without  
including the whole article or main question.

Which was laid on the table under the rule.

Mr. GERRY—I call up for consideration the  
resolution offered by me, in reference to a report  
of the common council of New York.

The SECRETARY proceeded to read the resolu-  
tion, as follows:

*Resolved*, That the clerk of the common council  
of the city of New York be and he is hereby  
requested to furnish this Convention with copies  
of the report of a select committee of such common  
council heretofore appointed to inquire and report  
what rights and franchises now belong to said city,  
and of what rights and franchises said city has  
been deprived by legislative interference or other-  
wise.

Mr. HUTCHINS—I move that that resolution  
be referred to the Committee on the Powers and  
Duties of the Legislature.

Mr. GERRY—My object in offering the resolution  
was for the purpose of procuring the information,  
as well for the Committee on the Powers and  
Duties of the Legislature as for the Convention  
at large, from an elaborate report, which I under-  
stand has been recently made at the instance of  
the common council of New York city, in refer-  
ence to the rights formerly vested in said city  
and the franchises which belong to her, properly  
speaking. By a reference of this resolution to  
the committee indicated by the gentleman from  
New York [Mr. Hutchins], it will practically  
become a nullity; if passed, the clerk of the com-  
mon council, pursuant to its terms, will be re-  
quested to furnish the information. As my object  
was to procure the information, I submit the  
proper course would be to pass the resolution.  
Then the clerk will make a return, and it will  
properly come before the committee indicated by  
the gentleman from New York [Mr. Hutchins].

Mr. HUTCHINS—If the gentleman will modify  
his resolution requesting the clerk of the common  
council to forward to this Convention a report  
made by individuals, naming them, I should have  
no objection to vote for it; but that resolution  
assumes certain facts which may or may not  
exist. It assumes that certain franchises, rights  
and privileges, have been taken away from the  
city of New York, and the Convention, by passing  
it, may pass upon that question. If the gentle-  
man merely wants a report here and offers a reso-  
lution calling for that report, I shall most cheerfully  
vote for it, but I think the present resolution con-  
templated a little more than calling for information.

Mr. HITCHMAN—I have no objection that the  
resolution of my friend should be modified in that



§ 3. The term corporation, as used in this article, shall be construed to include all associations and joint stock companies having any of the privileges and powers of corporations not possessed by partnerships or individuals. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

§ 4. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments by any person or corporation.

§ 5. The Legislature shall provide by law for the registry of all bills or notes issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

§ 6. The stockholders in every corporation shall be individually liable to the amount of their respective share or shares of stock in any such corporation, for all its debts and liabilities.

HORATIO BALLARD,  
*Chairman.*

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. L. W. RUSSELL, from the same committee, submitted a minority report.

The SECRETARY proceeded to read the report, as follows:

The undersigned cannot agree with the majority of the Joint Committee on Corporations in so changing the present Constitution as to inhibit the Legislature from creating corporations or amending the charters, if any, by special acts.

It is urged by those who support this measure that the creation and amendment of special charters are prolific causes for legislation, that they beget corruption, and that general laws should alone provide for the different classes.

In answering this position, I assume that after safeguards shall have been placed around future Legislatures, by this Convention, to insure their purity, and provision is made for decent payment of legislators, honest and capable men will be elected, and should it be otherwise the people will prove to be as bad as their representatives. In that event all the work of this Convention will be in vain, for positive law cannot revivify the waning virtue of a State.

Confident in this assumption, I believe our future legislators will be unassailable by corruption.

And though applications to our Legislature for special charters, and amendments to charters, are very numerous, yet that only proves that ours is a great State, and the requirements of its commerce and business numerous. Smaller States do not have the same needs.

And though such matters occupy a great deal of the time of our legislators, yet that is what we elect them for. They are sent to hear the wants of the people, to receive and consider their applications, and if proper, to grant them. Are we willing to adopt the principle that our future legislative body cannot be trusted with such details?

Provision by law exists for advertising the proposed application for a special charter or amendment. This ought to be sufficient to give pub-

licity to the proposition, and excite opposition, if there should be any.

General laws cannot provide for the special needs of different classes of corporations. Do persons interested desire to build a railroad from an ore bed and lay a wooden rail covered with iron? The general railroad law says the rail must weigh fifty-six pounds to the lineal yard.

Does a ferry company wish the sole privilege of ferriage for a portion of a river in order to render the enterprise sufficiently profitable to warrant the undertaking? It would be impossible to make a general rule which would apply with the same beneficial results to a sparsely as to a densely settled district giving the same monopoly, as to distance, to each.

But it is useless to multiply illustrations. It would be impossible to foresee the special necessities which might arise in different cases. Therefore intrust it to the Legislature which sits oftener than once in twenty years and can thus mould legislation to varying needs.

I, therefore, respectfully submit, that it is best to retain the section of the existing Constitution on this subject.

Neither have I been able to agree with the committee in requiring individual liability for the payment of the debts of all corporations, on the part of stockholders, to an amount equal to the amount of their stock.

Since the formation of the State the experience and wisdom of its Legislatures have directed that the stockholders in some corporations should be personally liable, and in others, not. Some are formed for purely business and money making purposes—others for scientific—and still others for purely benevolent uses. Some, as many rail and plank-road companies, are anticipated failures as moneyed speculations, and the incorporators subscribe, never expecting to see their money again, but are content with the general good attained by the performance of the objects of their creation. It is a well known fact that the pioneers in such enterprises lose their investments while their successors reap the profits. Under the present laws in incorporated academies and other institutions of learning, the incorporators incur no personal liability. In manufacturing, mining, mechanical, chemical, railroad and gas-light companies, they are liable only till the capital stock is paid in, except as regards laborers and servants of the company. In bridge companies the directors are responsible if debts are contracted beyond the amount of the capital stock. In insurance companies the corporators are liable only till the stock is paid in, while the law fixes upon the members of telegraph companies a personal responsibility equal to 25 per cent more than the amount of their stock.

Thus the experience of the past has demonstrated that distinction should be made between diverse classes of corporations in charging upon the members a personal liability for obligations. It seems proper to heed its teachings.

In order to carry out the very object of the creation of banking and other moneyed corporations, it is necessary to establish proper confidence in their ability to meet pecuniary obligations. Hence the necessity to insure such ability

by stringent laws. But the same requirements do not exist with other associations. Therefore I would leave the Legislature to say what laws upon this subject should apply to each particular class, and hence prefer to retain the section of the present Constitution applicable to this topic.

It is further submitted that a clause should be incorporated into the Constitution providing that foreign corporations doing business in this State should deposit security here for the punctual performance of their obligations, leaving the Legislature to prescribe the details. The present laws require this of insurance companies.

There are a host of mining, mechanical and other corporations, the creatures of other States and countries, many of them almost myths, with no pecuniary responsibility, which find it convenient, after doing business and contracting obligations here, to retire, "and like the unsubstantial pageant of a dream, leaving no trace behind." It seems as though the corporations of our State were sufficient for the wants of our people, and if others are permitted to enjoy privileges here, let them protect our citizens in their dealings.

The object of incorporations is to combine the associated action of many, as one artificial person with exemption from personal responsibility to its members. Such privileges should be granted to the creations of other States, whose charters are independent of our control, only when the interests of the people of our State are fully secured. I, therefore, recommend that a clause be inserted in the Constitution in substance as follows:

"The Legislature shall provide that foreign corporations shall secure the performance of obligations created in this State."

LESLIE W. RUSSELL.

Albany, Aug. 2, 1867.

We concur as to the first and second propositions embraced in this report, but without indorsing all the reasons stated therein.

HOBART KRUM,  
C. V. R. LUDINGTON.

Mr. LUDINGTON—Not being present this morning at the meeting of the committee, I had not the opportunity of signing the minority report, in which I most heartily concur. I desire leave to sign it now.

The PRESIDENT *pro tem.*—The Chair is of opinion that the gentleman has that leave without requesting it at the hands of the Convention.

[Mr. Ludington then signed the report as above.]

Mr. VEEDER—On behalf of the majority of the Committee on Banking, Currency and Insurance, I beg leave to submit the following further report:

The undersigned, members of the Committee on Currency, Banking and Insurance, dissent from so much of the joint report of said committees as relates to section six of said report, and respectfully report the following section as section six.

SECTION 6. "The stockholders in every corporation and joint stock association for banking purposes, issuing bank notes or any kind of paper credits to circulate as money, shall be individually liable to the amount of their respective share or

shares of stock in any such corporation or association for all its debts and liabilities of every kind."

TRACY BEADLE,  
BENJ. N. HUNTINGTON,  
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Mr. LANDON gave notice that he would at a future day ask the adoption of the following resolution:

*Resolved*, That the previous question may be applied to the particular sections of an article or other question under consideration, without including the whole article or main question.

Which was laid on the table under the rule.

Mr. GERRY—I call up for consideration the resolution offered by me, in reference to a report of the common council of New York.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the clerk of the common council of the city of New York be and he is hereby requested to furnish this Convention with copies of the report of a select committee of such common council heretofore appointed to inquire and report what rights and franchises now belong to said city, and of what rights and franchises said city has been deprived by legislative interference or otherwise.

Mr. HUTCHINS—I move that that resolution be referred to the Committee on the Powers and Duties of the Legislature.

Mr. GERRY—My object in offering the resolution was for the purpose of procuring the information, as well for the Committee on the Powers and Duties of the Legislature as for the Convention at large, from an elaborate report, which I understand has been recently made at the instance of the common council of New York city, in reference to the rights formerly vested in said city and the franchises which belong to her, properly speaking. By a reference of this resolution to the committee indicated by the gentleman from New York [Mr. Hutchins], it will practically become a nullity; if passed, the clerk of the common council, pursuant to its terms, will be requested to furnish the information. As my object was to procure the information, I submit the proper course would be to pass the resolution. Then the clerk will make a return, and it will properly come before the committee indicated by the gentleman from New York [Mr. Hutchins].

Mr. HUTCHINS—If the gentleman will modify his resolution requesting the clerk of the common council to forward to this Convention a report made by individuals, naming them, I should have no objection to vote for it; but that resolution assumes certain facts which may or may not exist. It assumes that certain franchises, rights and privileges, have been taken away from the city of New York, and the Convention, by passing it, may pass upon that question. If the gentleman merely wants a report here and offers a resolution calling for that report, I shall most cheerfully vote for it, but I think the present resolution contemplates a little more than calling for information.

Mr. HITCHMAN—I have no objection that the resolution of my friend should be modified in that

way, but to say that this Convention is called upon to pass upon certain questions of which we have no knowledge, is to say, what in my judgment, is wrong; that the city of New York has not been deprived of her rights, and has not been deprived of powers and duties and privileges which belong to her people to exercise, is to say what is untrue. This Convention and the gentleman from New York [Mr. Hutchins], knows very well—

The PRESIDENT *pro tem.*—The Chair is of opinion the gentleman is out of order.

Mr. HITCHMAN—I am simply replying to the remarks of the gentleman from New York [Mr. Hutchins].

The PRESIDENT *pro tem.*—The Chair did not understand the gentleman from New York [Mr. Hutchins] to make any such assertions.

Mr. GERRY—I think the gentleman from New York [Mr. Hutchins], who has opposed my resolution, is in error in relation to its terms. It certainly was not my object, in framing its language, to commit this Convention to any statement whatever. I endeavored to make it as specific as possible, in order to inform the officer to whom, by its terms, it is to be sent, of the information we require, and I endeavored to comply with the language of the resolution as near as I could, which was offered by one of the members of the common council, pursuant to which the committee in question was appointed. That committee was appointed some time since; they were desired and requested to procure all the information in their power, and, as I am informed, they have collected a mass of material which will throw considerable light upon the labors of this Convention when they come to discuss in Committee of the Whole the report of the Committee on Cities hereafter to be presented. I think if the resolution be read again, as I ask that it may be for the information of the Convention, it will be found that there is nothing whatever contained in its language or terms either committing this Convention to the subject of the information requested, or desiring anything more than specific information on the subject that has been brought up before the common council in question. I submit, therefore, with great confidence that the resolution is perfectly proper, both in language and tenor, and I ask that it be passed.

Mr. HUTCHINS—I move to amend the resolution by inserting after the word "franchises," "if any," and I withdraw the original motion to refer.

Mr. GERRY—I have no objection to accepting the amendment, although I want it distinctly understood that I do not regard it as at all necessary. It is a somewhat novel principle that the city of New York has not some rights.

The question was then put on the resolution as amended, and it was declared adopted.

Mr. PRINDLE—I desire to call up the resolution offered by me yesterday in regard to the extension of the Chenango canal.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the State Engineer and Surveyor be requested to furnish information to the Convention of the state of the work on the extension of the Chenango canal to the State line of Penn-

sylvania, the proportion of work already done, and the probable expense, in addition to the amount already appropriated, of completing said extension.

The question was then put on the resolution of Mr. Prindle, and it was declared adopted.

Mr. BARKER—I offer the following resolution: The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the several standing committees appointed by this Convention be requested to make their final reports on or before the 9th inst.

The question was then put on the resolution of Mr. Barker, and it was declared adopted.

Mr. LUDINGTON—I offer the following preamble and resolution:

The SECRETARY proceeded to read the resolution, as follows:

WHEREAS, Schemes and devices for selling property and raising money through the sale of tickets or chances in what is commonly called "gift enterprises" have become common in our State, and of alarming interest to the people, and which, while they lack the odium and legal disability attaching to offenses known under the laws against gaming and lotteries, are nevertheless equally fruitful of evil and dangerous to public morals; and

WHEREAS, Such schemes and devices as conducted are of doubtful legislative control; therefore

*Resolved*, That the Committee on the Powers and Duties of the Legislature be requested to report a Constitutional provision by which such practices may be prohibited by law.

The question was then put on the resolution of Mr. Ludington, and it was declared adopted.

Mr. STRATTON—I call for the consideration of the resolution offered by me yesterday.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the commissioners of metropolitan police of the city of New York, be requested to report to this Convention, as soon as practicable, the number of men detailed from the metropolitan police force as attendants upon each of the police courts, the courts of general and special sessions, and any other courts in the city of New York, during the year 1866, designating the name of each of said courts, and the amounts paid for such attendance upon each of said courts respectively; and also whether the amounts so paid will be increased or diminished for the year 1867, and if so, how much for each of said courts.

The question was then put on the resolution of Mr. Stratton, and it was declared adopted.

Mr. CLINTON—I offer the following resolution and ask that it be laid on the table:

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That in the opinion of this Convention, it is the duty of the United States of America to refund the moneys and assume the debts expended and incurred by the loyal States in aiding Congress to raise and support for "the common defense" during the late rebellion, those armies which, with the blessing of Almighty God, preserved the "more perfect Union," and secured "the blessings of liberty to ourselves and our posterity."

*Resolved*, That a copy of this resolution, authen-



sense of this Convention as to the propriety of double or single senate districts, I offer the following resolution:

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Committee of the Whole be discharged from the consideration of the report of the committee "on the Legislature, etc.," and that the same be re-committed to said committee, with instructions to so amend said report as to provide for *thirty-three single* senate districts, and that said committee report such districts.

Mr. SPENCER—I offer the following resolution as a substitute for the resolution of the gentleman from Seneca [Mr. Hadley].

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the Committee of the Whole be discharged for the present from the further consideration of section second of the report of the Committee on the organization of the Legislature, and that the same be referred back to said last-named Committee, with instructions to report a section with provisions in substance that the Senate shall consist of Senators chosen from the same number of senatorial districts, to be numbered from one to thirty-six inclusive, for the term of four years, so that the terms of one-fourth of said Senators shall expire in each year. The whole number of Senators shall be chosen at the election first held under this Constitution, and shall be divided into four classes of one-fourth of said Senators in each class, the terms of whose office shall be respectively one, two, three and four years, and which classes shall be so arranged that Senators of each class shall be distributed equally as nearly as may be through the State; and also to provide either for the division of the State into senatorial districts, or for such division by the Legislature as to said Committee shall seem proper.

Mr. SPENCER—My object in offering this substitute was to test, not only the question of single senatorial districts, but also the term of office, and the question can be taken separately upon these two propositions. The resolution was drawn with the view of being offered in Committee of the Whole, and contains some words which are not perhaps proper to be offered here. Gentlemen will understand the object of the proposition.

Mr. BARKER—I wish the gentleman from Steuben [Mr. Spencer] would withdraw his substitute. The gentleman from Seneca [Mr. Hadley], as I understand it, has introduced his resolution for the purpose of testing the sense of this Convention, whether we will adhere to the single senate district or not, if it is decided that we shall, then we shall go into detail. If it shall be decided that we abandon it then we may arrange the large districts. If we get at the principle on which we are to elect, the Senate is established, the balance is detail. I apprehend it will facilitate our deliberations very much to have this question settled.

Mr. RATHBUN—I do not believe it is worth while to stop in the discussion of the report of that committee for the purpose of taking up either of these propositions. I submit to the gentlemen of the Convention that the discussion of these very questions, and all of them, is really

necessary. I am very confident that a great many members of this Convention have not decided fully as to the manner this thing shall be arranged. I know my first impression would be in favor of large districts. I know there are inconveniences and difficulties, but I do not know the extent of those inconveniences or difficulties. I desire that the members of the Convention shall show us, in the course of the discussion, in what particular the large districts are to be considered objectionable. Again, the question of single districts will necessarily be involved in this discussion, and so would the "double district," as it might be called. Now, I desire to hear a full and fair discussion of this question in connection with the report of that committee. I believe it is best, for I do not believe that any member of the Convention is now ready to take any one of these propositions by itself and determine definitely and properly how it shall be disposed of. I rose with a view to make a motion that the whole subject be referred to the Committee of the Whole, and be considered in Committee of the Whole. It seems to me it is the only place in which anything can be done properly and the entire thing be discussed together. Members of the Convention will see that all these questions are intermixed and intermingled in such a manner that they ought to be discussed in connection. You take the city of New York; the proposition is to give the city five or six Senators; I believe there is a proposition to make an addition so as to entitle it to six. Now, that would seem to dispose of all difficulty in regard to the city of New York. In regard to Kings county in the second district, the gentleman from Westchester [Mr. Greeley] proposes to strike out Westchester; that would remove all difficulty there by reducing that district. But when all difficulties with regard to cities are removed, then comes the other question in regard to the districting of the State upon the system of four or eight districts, and I want to hear that question discussed before it is abandoned. My recollections of the condition of things from 1821 to 1846 were that the Senate was then regarded as entirely different from what it has been under the single district system. It has lost, in a great measure, its character as a higher and more conservative body than the Assembly, mainly upon the ground that it is brought so completely in contact with the assembly districts that it is difficult to mark the line of distinction between Senators and Assemblymen. And in order to have it a conservative body to check and control the hasty and inconsiderate legislation on the part of the Assembly, it is, in my judgment, highly necessary that we should resort to another rule than that of the single district. How far we should go I do not say, but I desire to hear this discussed. I know there are a large number of members in this Convention who desire to hear arguments which may be offered, pro and con, on these subjects, in order to make up their minds. I submit the motion I arose to make, that this whole subject be referred to the Committee of the Whole.

The PRESIDENT *pro tem.*—The Chair will state that the refusal to entertain these propositions must necessarily have that result; there-

fore it is not necessary to make such a reference.

Mr. PRINDLE — I rise to suggest that I trust this matter will not be taken away at the present time from the Committee of the Whole. I am aware we have already spent more time in Committee of the Whole than we should have spent upon the report of the Committee on Suffrage. But it seems to me there is danger of running to the opposite extreme. It seems to me we ought to have the privilege of deliberating upon this question fully and fairly to a reasonable extent in Committee of the Whole. I desire, for one, to say something in Committee of the Whole upon this subject. And I believe there are many other gentlemen here who wish to express their views, and give reasons for votes which may be given, in Committee of the Whole when the whole subject is under consideration, where we shall not be limited to such a narrow compass as in the Convention. It certainly cannot do much harm to discuss this subject a little further, a day or two—one day at least, in Committee of the Whole, where the speeches are confined to twenty minutes.

Mr. COMSTOCK—I move that the resolution for the present lay on the table.

The question was put on the motion of Mr. Comstock and declared carried.

Mr. ANDREWS—Before going into Committee of the Whole I desire to ask leave of absence for myself for to-morrow. I have an engagement that I cannot well disregard.

There being no objection leave was granted.

Mr. E. BROOKS—I would like to ask the same for myself until Monday evening.

There being no objection leave was granted.

Mr. VEEDER—I desire to ask leave of absence for myself from Saturday until Monday. I am obliged to go to my court on Monday.

There being no objection leave was granted.

Mr. HITCHMAN—I ask leave of absence for myself for to-morrow and Monday.

Mr. GREELEY—I object. We are in danger of being left without a quorum. I object to any more leaves of absence being granted.

The question was then put on granting Mr. Hitchman leave of absence, and it was declared carried.

Mr. FULLERTON—I ask leave of absence for myself.

Mr. GREELEY—I object.

Mr. BARKER—I ask the gentleman to state his reasons for asking leave of absence.

The PRESIDENT *pro tem.*—The Chair cannot compel the gentleman to give a reason.

Mr. FULLERTON—I have important business which will occupy my time to-morrow and on Monday at home.

The question was then put on granting Mr. Fullerton leave of absence and it was declared carried.

Mr. BERGEN—I ask to be excused until Tuesday morning. My reason is sickness in my family.

Mr. GREELEY—I object.

The question was then put on granting Mr. Bergen leave of absence and it was declared carried.

Mr. LOEW—I ask leave of absence for myself

for to-morrow and Monday on the ground that I must hold court on those two days, and I have no other justice to hold court for me, as I have made no arrangement for those days.

Mr. VAN CAMPEN—If it is in order I desire to ask how many are excused.

The PRESIDENT *pro tem.*—The Chair understands from the Secretary, that seventeen have been excused by the action of this morning.

Mr. HATCH—I desire to ask to be excused.

The PRESIDENT *pro tem.*—The Chair would inform the gentleman that there is still a proposition before the Convention, in the case of Mr. Loew, which has not been acted upon.

Mr. KINNEY—Will the Secretary give us the number who have been excused before, and whose excuses still continue.

The PRESIDENT *pro tem.*—The Chair will endeavor to procure the information through the Secretary.

Mr. CLINTON—It may be proper for me to state that having been excused until Monday, I nevertheless will be here on Saturday. I find it is not necessary to be absent.

Mr. M. H. LAWRENCE—If it is in order I would like to have the roll called, so as to know how many will be present after deducting those who are excused.

The question was put on the motion to call the roll and declared lost, on a division, by a vote of 63 to 50.

The PRESIDENT *pro tem.*—The Chair will answer with reference to the last question asked of the Secretary, that in addition to the seventeen gentlemen who have been excused, three others have been excused, making twenty in all.

The question was put on excusing Mr. Loew and it was declared carried.

Mr. DUGANNE—I desire to ask of the Convention permission to withdraw from the committee to which it has been referred, the memorial containing the name of John A. King, for the reason I have just received a letter communicating to me the fact that the promise has been made to return that signature to the family because it was the last signature which Mr. King made before his death.

The PRESIDENT *pro tem.*—The Chair is of the opinion at present that under the rule which has obtained in the legislative bodies in this State, and I believe it is settled by enactment that no such request can be granted by the Convention. As at present advised the Chair must rule, therefore, that the request cannot be granted.

Mr. DUGANNE—Can I refer the request, and upon a full report of the committee have the report returned?

Mr. WEED—If the President *pro tem.* would allow me I would state that there is no statute that can apply to this body on such a question. Our rules do not prevent the return of a paper or the withdrawing of papers from the files of the Convention.

The PRESIDENT *pro tem.*—With the consent of the gentleman from New York [Mr. Duganne], the Chair will hold the question in abeyance.

Mr. HATCH—I desire to be excused until next Tuesday, for the reason of sickness in my family.

The question was then put on granting Mr

Hatch spoke of absence and was declared guilty.

The Convention then resolved itself into the Committee of the Whole upon the report of the Committee on the Legislature, its Organization, etc. Mr. ADAMS, of Wayne, is the chair.

The Chairman announced the pending question to be on the amendment of the gentleman from Cortland (Mr. Ballard).

Mr. HATCH—I ask whether this amendment is a substitute for the section.

The CHAIRMAN—The Chair understands the proposition of the gentleman from Cortland (Mr. Ballard) is a substitute for the sections in the report relating to two districts in the State.

Mr. HATCH—Is it for thirty-two districts as I understand it—

Mr. K. A. BROWN—I believe, Mr. Chairman, I had the floor last night—

The CHAIRMAN—The Chair recognized the gentleman from Erie (Mr. Hatch) first, supposing the gentleman wished merely to ask a question, then it recognized the gentleman from Lewis (Mr. K. A. Brown), but ascertaining that the gentleman from Erie (Mr. Hatch) desires to address the committee, awards him the floor.

Mr. HATCH—I desire to say, sir, that I approve of the amendment of the gentleman from Cortland (Mr. Ballard). It is to substitute the old system of thirty-two districts for eight large senatorial districts, as now proposed by the Committee on the Organization of the Legislature. I fail to appreciate any of the arguments that have been introduced here by the chairman of the Committee on the Organization of the Legislature, in favor of changing our present system. There has been no complaint from the people against the present system. They ask no change. I don't believe in trying experiments on making Constitutions. Let well enough alone is an old proverb. The gentleman from Rensselaer (Mr. M. J. Townsend) expressed, in the main, my views as fully, and gave reasons against the propositions which were before the committee, that I will not attempt to add to them, as I believe in letting well enough alone, in letting a well tried system in the State alone. I consider the tendency of this new representative scheme, the centralization of political power in parties, and that is an objectionable as a centralization of power in the State or nation. It is removing political power from the people. The democratic theory of government is to keep it near the people. I am opposed to all the propositions presented before this committee, except the one amendment proposed by the gentleman from Cortland (Mr. Ballard). I should add, however, that the proposition made by the gentleman from Westchester (Mr. Greeley) can be shown to be a practical proposition, embodying the principles of minority representation. I can say, sir, that proposition will receive my cordial support. A plan that would secure representatives in the Legislature from minorities as well as majorities is democratic. It seems to me, sir, that those who believe in popular representation and popular supremacy, should sustain it if it is practical. It is antagonistic to the proposition of the larger district representation recommended by the committee. It is a step in the right direction,

giving or rather leaving power with the people, where it belongs. The proposition of the committee, as I have before said, is centralizing—this of minority representation is decentralizing political power. It is in harmony with the spirit and substance of the Constitution of 1846, that the only true depositary of power was in the people. I believe in the principle of self-government. I believe in the instinct of the masses—the common understanding of the people when fairly expressed to be the best governmental action. For these reasons I oppose the report of the committee.

Mr. K. A. BROWN—It is not my purpose, Mr. Chairman, to make an elaborate argument on this question. As I understand the amendment proposed by the honorable gentleman from Cortland (Mr. Ballard), it is to retain, by an article in the amended Constitution, the present number of thirty-two Senators and the present districts as now organized. In relation to the number of Senators, I desire to say, that, so far as the State at large is concerned, in my judgment the present representation of Senators is not too large and is satisfactory except as to the city of New York and the immediate vicinity, where the population increases faster than it does in other portions of the State. In order to preserve what I consider a proper representation in the other parts of the State, I am decidedly in favor of a small increase of Senators to keep up with that increase of population, so that there may not be the complaint which has been made upon this floor on the part of the great city of New York, that its great interests, its teeming and growing population, and its immense wealth, and importance, are not sufficiently cared for, in the number of representatives in the Senate accorded to that locality. And, sir, I do not think the addition of one Senator is enough to meet this want, two or three at least should be provided for, in my judgment in addition to the present number, to meet the just requirements of those great interests—that growing population and rapidly increasing business. But, sir, the proposition to change from the single district system to a system of eight districts, I decidedly oppose. It is said that the larger the constituency the better the representatives. I deny that that proposition is proved, either by any sound argument or by any practical experience in this State. It is alleged that there is corruption in the legislative body. That, sir, is a charge very easily made, and if it were true, I deny that the proposed change from single districts to large districts affords any sort of remedy. Now, sir, on the subject of purity of the Senate, it has not happened, so far as I have heard, within the last twenty years, that any two members or any one member has been called upon to resign his seat to avoid expiation for corrupt practices in the office of Senator. Two such instances occurred under the old system—two different districts in this State—have been declared by the Senate guilty of moral misconduct was not expelled by the Senate, but was permitted to resign. What is it that keeps men honest in the Legislature? When people select a man for legislator, they do not select a dishonest man



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Mr. PRINDLE — I rise to suggest that I trust this matter will not be taken away at the present time from the Committee of the Whole. I am aware we have already spent more time in Committee of the Whole than we should have spent upon the report of the Committee on Suffrage. But it seems to me there is danger of running to the opposite extreme. It seems to me we ought to have the privilege of deliberating upon this question fully and fairly to a reasonable extent in Committee of the Whole. I desire, for one, to say something in Committee of the Whole upon this subject. And I believe there are many other gentlemen here who wish to express their views, and give reasons for votes which may be given, in Committee of the Whole when the whole subject is under consideration, where we shall not be limited to such a narrow compass as in the Convention. It certainly cannot do much harm to discuss this subject a little further, a day or two—one day at least, in Committee of the Whole, where the speeches are confined to twenty minutes.

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subject. And, sir, I think that the arguments that have been offered in support of this proposition, to go back to the system of large districts, is not supported by any practical experience, or by any sound reason. But the gentleman from Chautauqua [Mr. Barker] says we must have experience. True, we want experience in the Senate, and how do we get it? Well, the gentleman from Rensselaer [Mr. M. I. Townsend] says there is a class of men, graduates from the board of supervisors. Why, sir, that is not a bad school to teach men how to act as Senators. He says we have a class who graduate from the Assembly. Neither is that a bad school. Some men come into the Senate who have not had any experience, and before they passed through their two years, many of them have demonstrated themselves to be the ablest and best men in the Senate, and if they are found to be competent and faithful, in the discharge of their duties, they are again returned, and thus the next Senate has the benefit of their experience and their industry and their capacity. When is it that the Senator is most diligent in the discharge of his duties—when is it that he gives most attention to his business and seeks most faithfully to discharge those duties at all times? Why, sir, it is the very first session he attends; and if he becomes careless and worthless at any time, it is after he has filled that position for a season, got rid of his industrious habits, and become careless as to the interests of his constituents and of his own reputation; and his experience in that case is of no particular value. I say, if the Senator proves himself able, competent, efficient and trustworthy, he will be returned to the Senate, and the Chair must have in his mind's eye this moment, several in the present Senate, and those who have recently left it, who have been elected and re-elected, and the third time elected from these single districts. And we have those who have graduated from the Senate and been elected Governors of the State—two of them—who were elected to the Senate from single districts, and one of them has been promoted to a still higher sphere, to a seat in the Senate of the United States. Sir, if the people themselves are to be represented in their State Legislature, in their Senate, give them the opportunity, each one hundred thousand of them in their single districts, to designate a man to watch over their interests, and to take care of them, and they will sustain him if he deserves to be sustained—those who know him and feel a personal interest in him will support and encourage and sustain him, if he proves himself worthy of encouragement and support, but if he is found to be incompetent, unfaithful or dishonest, his immediate constituency, in the single district, will ascertain those facts and dispose of him as quietly as possible at the expiration of his term. I am decidedly in favor of retaining the single district system, and making such addition to the number of Senators as will be sufficient to accomplish the purposes specified at the commencement of my remarks. Now, the gentleman [Mr. Schoonmaker] said last evening, in reference to the representative population which was fixed under the Constitution of 1846, that it included aliens who were taxed; the exclusion being, as he represented, "aliens not

taxed and persons of color not taxed," and that the punctuation of the article in question bore him out in that interpretation. On being asked if he noticed the comma after the words "excluding aliens," and before the words "and persons of color not taxed," he replied that there was no comma there. I do not propose to make an argument as to the interpretation of the Constitution of 1846 (Article 3, section 4) on that subject. It is too clear to be for one moment questioned. But I hold in my hand an official copy of that Constitution, published in 1849, by order of the Legislature, in which the comma does follow the words "excluding aliens," and precedes the words "and persons of color not taxed," which clearly proves the understanding of the Convention of 1846, and that no change was made or contemplated by the committee whose report is now under consideration, as to aliens being considered a part of the representative population of the State.

Mr. BOWEN—As at present advised, I am strongly inclined to favor the report of the Standing Committee so far as it divides the State into eight Senate districts, and the considerations in favor of such division have been so fully and so ably set forth by the honorable gentleman from Chautauqua that I do not feel at liberty to occupy the time of the committee by adding anything, and shall content myself in attempting to vindicate the report by noticing some of the objections thereto urged upon this floor. It has been urged that a partisan political advantage was intended, and will result from an adoption of such division. The intention of the committee is, in reality, of no consequence, because, if their report, in the respect under consideration, be right, and will, in its operation, tend to advance the moral and material interests of the people, and the whole people of the State, then it should be adopted, whatever may have been the intentions of the individual members of the committee. But the members of that committee disclaim any such intention, and I am bound to believe them. Whether the adoption of the division recommended will result in an advantage to either political party I have not inquired, and shall not inquire. It is enough for me that the public interests will be thereby promoted, and if, in consequence thereof, the political party to which I am attached shall sink into a hopeless minority, let it sink. It may not be out of place here to suggest that the Constitution recommended by us, if adopted by the people, may, and probably will, outlive the rise and fall of more than one political party; and is it not a question worthy of consideration, whether, in consideration of the fact that the result of our labors is intended to outlive party issues, we are not lowering the position we occupy by allowing party politics, which are ephemeral and for the day, to enter into our deliberations? But it is objected that where the district is large, the elector, residing remote from the one voted for, may not know the fitness and qualifications of the candidate—and on the other hand that the candidate, if elected, may not be acquainted with the requirements of his remote constituency. But will not the same objection apply to the election of our Governors and State officers who must

knowingly. If he is found to be dishonest in office, this dishonesty is developed in consequence of the circumstances by which he is surrounded, the position he has held, and the temptation to which he has been exposed, and the longer he holds that position and the longer he is exposed to those temptations the greater is the liability for corruption; and the oftener he is called home to his constituents, to give account of his acts as a Senator, the more likely is he to retain the honesty he brought here into the Senate with him, and to preserve the good character he has borne among his constituents, and by which he was enabled to secure so honorable and important a position. Sir, there is no difficulty, in the hundred thousand and more people who comprise a single senate district in designating some one man among their number competent and able and honorable enough to discharge the duties of the office of Senator. It is not necessary to link the county of Albany, with its great interests and its connections with the corporation of the Central railroad and other corporations, with the great agricultural county, St. Lawrence, in order to find a man competent to represent St. Lawrence in the Senate. It is not necessary for the county of St. Lawrence, or other agricultural districts of the State, to come to the county of Albany to get advice as to whom they shall send to the Senate, nor is it necessary to go from here to those districts to get advice. No, sir, there is not a town in that county (St. Lawrence) but that is able to furnish a competent man to represent that district—whether a single district, or a double district, or a quadruple district, in the State Senate. Ability, experience, competency, integrity, are not so scarce in this country that you need to link together six, or eight, or ten or twelve counties to find four men who are fit and competent to represent any locality in the Senate of the State. But, sir, if the argument is sound, if the larger the constituency the better the Senator you get, why not say four districts instead of eight, two instead of four, or the whole State in one district, because, sir, the larger you make the constituency the greater you make the Senator—that is the argument. Sir, in a single Senate district the political conventions or nominating assemblies are numerous compared with those which meet in large districts; they have a delegate, perhaps, from every town, several from every county; large conventions are got together, representing every portion of the district, and they consult together and nominate a man for Senator. But it is said that small politicians in a small way can secure nominations in a small district. Sir, that argument proves altogether too much. You are necessarily compelled to rely upon the people for your candidate for Senator, and if the people in particular neighborhoods associate together, a hundred thousand people and more in one district, by their delegates and their representatives assembled in convention, are not honest enough and competent to furnish you a suitable man as a candidate for Senator, I would like to know what has become of our theory of representative government? What is it good for? Upon whom do you rely? Upon whom do you fall back to regenerate your Senate if it becomes corrupt? Why, it is the peo-

ple, and if you cannot rely upon their honesty and integrity, upon their judgment and discernment, upon whom can you rely to maintain your system of representative government, and to supply your Senate with proper and competent and honest members? That rule, that necessity, applies to every nomination, to every office. But, sir, take the large district system for one moment; take this very district as proposed by your honorable committee which includes St. Lawrence and Albany. They will send a few members from the county of Albany to the nominating convention, and those members can very easily find their way into such a convention through the agency of the political machinery that exists here; they go there, a few of them, more likely to be politicians by trade than those are who come together for the same purpose in the single districts (in which a larger proportionate number of delegates generally assemble), and I ask who selects the candidate for Senator to be located in the county of Albany? Why, the delegate or delegates that go from the county of Albany, St. Lawrence does not interfere with it. There would not be one case in a thousand where the delegation from one county would seek to interfere with the delegation from another, as to the man who should represent that portion of the district, in which a candidate was to be located. So that in fact delegates from a particular county or locality would nominate their own man, and when thus nominated he would be voted for by the electors of the whole district, they knowing nothing and caring nothing for him, except that he is a member of the party, and for that reason must be voted for. While on the other hand, in a small district, under our single district system, the constituency knows the candidate. I vote for a man because I know him, and take some interest in him, and, sir, it is desirable above all things, that the greatest inducements should be held out to get intelligent and honest voters, and all voters, to come to the polls at the time of election. Personal acquaintance with worthy candidates has that tendency. I insist that the single district system has worked well. Now, there is a class of men in every community, in every county in the State, in every locality, in every district, whose circumstances and whose business arrangements and employments are inconsistent with their taking a seat in the Senate; therefore they do not desire to become candidates for the Senate; there is another class, perhaps not more ambitious, whose circumstances, business, and arrangements and position, are such that they can become candidates and members of the Senate, and, sir, in this class, are men of intelligence and practical ability, of good sense, of sound and mature judgment, who understand our institutions, and are fully competent to discharge the duties of that high office; and, sir, the people will always select the best men who are available for those positions, and they would do so in small districts as well as large, when they had the opportunity to select from those of whom they had some knowledge, and they would be more likely to vote for men who are incompetent, when they are called upon to vote for men of whom they know nothing. That is my judgment upon that



present evils they will increase them. The only alteration from the present system which it seems to me proper to make, will be to extend the term of office of Senators to three or four years, and arrange them by classes so as to elect one class each year. That would avoid the necessity of changing the whole body at one period, and that could be engrafted upon the present system without any great difficulty. In a two years' term it would perhaps be better to elect one-half one year and the other half the succeeding year. A change of that kind, I believe, would be beneficial. In relation to members of Assembly, as proposed by this report, I think it will be equally inconvenient. Under the present system no clique of partisans can well control or command a county composed of several districts. This is a very difficult matter. I have in my own experience seen it attempted, but it failed. Take for instance the county in which I reside, part agricultural and part commercial, part rural and part city; in the city it is very common for those who are desirous of office to be more critical and sharp than those in the country, and if you make a district of the whole county, the rural districts might never get the representative they desired, for the reason that the governing power is in the city, and of course they would exercise that power in favor of their own friends; but under the single district system the rural districts would have a representation such as they wished. Under the other system a clique might nominate every member, and, where there was a strong party majority, would elect them. I do not desire to put it in the power of any set of men to control the whole destiny of a county and the whole representation. I prefer that the power should be divided up among the people of the county and that the representatives should be brought as close to the people as possible, and that the people should know their representatives and be able personally to judge of their qualifications, of their honesty and ability, instead of being obliged to take the judgment and opinions of others on the subject. If there is a stream of corruption, Mr. Chairman, as has been said, in this country, it must be corrupt at its source. If the body of the people are corrupt their representatives are corrupt, and you must correct it at its source, and unless it is corrected there it will be impossible to prevent corruption. The source must be pure. It may be, sir, that the people are more corrupt than in former days. That must be so if all we hear about corruption in our public men and in our legislative bodies be true. But, sir, I think that the adoption of this proposed system of large districts is not the best remedy for the evil.

Mr. SKYMOUR—Mr. Chairman, we have two propositions presented to us upon this very important question. One is that of the committee, recommending large districts for Senators; and the other, the amendment offered by the gentleman from Cortland [Mr. Ballard] recommending small districts. For myself I believe in the theory of a large district, and I shall be very happy to sustain the report of the committee, provided those districts shall show, when they come to be presented for the final action of the committee, a fair and proper distribution of the power

which is here to be granted—the power of representation. I believe in the theory that the large district is the better one. I am not of those who think it is necessary to have small districts in order that the candidate may be known to the constituency; I want a large district so that we may select men at large through an extensive district, who by their experience and their character, after having been tried by the people in important stations shall give us the assurance that they are the proper men to fill the high position of Senator. We cannot ever expect to raise the character of our Senate to the position which it should be, unless we have an opportunity of selecting such men. It has been said that men elected from small districts, have gone from the Senate to the gubernatorial chair. That is so. But it should be remembered that when you select a Governor you select from the whole range of this State, and it is the pride of the citizens of this State to select a man who has character, experience and statesmanship, that shall enable him to do honor to the station to which you elect him. I want something of that high character, sir, to pertain to those men who are to be elected Senators of this State. We propose districts in which there will be an average of population of from four to five hundred thousand, a population as large as some of the smaller States of this Union, and we shall, I think, thus give a chance in the representation of so large a body for the selection of our best men. It is said that they will not be known to the people, that a candidate may be presented in one part of a large district who will be an entire stranger to the citizens of another part. I do not believe that will be the result. The tendency of the proposition presented by the committee is not to produce such a result, but to constrain the party who presents the candidate, to name a man so well known and experienced, so high in character that the people of that district may know him, know him as a public man, know him as a man suitable and proper to fill this elevated position. It is claimed too, that if the large district system is adopted, the whole management of bringing forward the candidates, will be under the control of politicians, professional politicians, who have nothing to do but to hold caucuses and select candidates for the rest of the people. I have to say in answer to that suggestion that if a political party permits that to be done they will jeopardize their ticket. I believe there is too much good sense in each of the great parties in this State to permit such a thing to be done. If you have a large district, and a candidate is selected by one party who is not known to the people, a candidate in whom they do not know that they can repose this high trust, it will be the object of the opposing party to select one who is known to the people, and a man who has commended himself to the people by his public character. Hence you will perceive, Mr. Chairman, that there will be the highest motive presented for both parties to select their best men. The time has come, I think, to do this, and I am very glad that the committee have had the firmness to take this stand. We

be chosen by the State at large? And again, since the adoption of our present Constitution, has it not been a growing evil that our Legislators have legislated altogether too much in the interest of individuals, and for or against particular localities, and for corporations purely local, in disregard of and frequently at the expense of the interests of the people at large and will not the recommendation of the committee tend, at least in some degree, to mitigate the evil if such evil exists? The gentleman from Rensselaer has very eloquently and forcibly advocated the election of Senators by single districts and if I mistake not, the most weighty reason he gives therefor, is, that under the Constitution of 1821, a Senator was expelled for corruption, while under the present Constitution nothing of the kind has taken place. May not the reason be, that under the former Constitution expulsion was the result of official corruption—while under the present Constitution that practice has, for some cause, fallen into disuse? But it is objected that the division of the State into districts as reported is unequal—that by the report some localities are favored at the expense of others. The members of the committee, however, inform us that they have made the most fair and equitable division they were able to make under the circumstances, and I am bound to believe them. If there are other members who are able to suggest one more fair and equitable, let us by all means adopt their suggestion. It is said that the division reported is based upon the census of 1865, and it is more than suggested that this census is unreliable. That census was taken by officers of the State charged with that duty, and the committee doubtless concluded that they were not at liberty to condemn it in the absence of proof of its unreliability. The gentleman from Richmond [Mr. E. Brooks], complains that the report does great injustice to his immediate constituents; that by the report, the district including the county of his residence, has not a representation equal to other localities, and to remedy the inequality he proposes what? Why, to drop from his district the county of Westchester, without attaching it to any other district. Will the gentleman pardon me if I suggest that he, as a member of this Convention, is bound equally with the members of that committee to propose the best plan that can be devised, and that in amending the report of the committee he should not have left that county without representation. If the committee had made their report as the amendment of the gentleman leaves it, they would have been derelict in duty, if not liable to censure. And is not the fact that the gentleman's amendment, as he must admit, leaves the report more objectionable than before, an implied admission that, in the respect complained of, the report is the best that could be proposed? The same distinguished gentleman further objects that the committee, while adopting the voting population as the basis of representation, have yet included in that basis the colored citizens, although as yet they are not, except in a limited degree, allowed to vote. Is not this right? As it now appears, if the result of our labors is approved, then, at the first election under the new Constitution they will be allowed to

vote, and should be represented; and hence is derived, perhaps, the strongest argument against separate submission, as in case the colored citizens should enter into the basis of representation, and the franchise, on a separate submission, should not be extended to them, a wrong would be perpetrated; while on the other hand, if the basis excluded them, and the suffrage should be extended, an equal wrong will result. It can scarcely happen that any provision, if rejected on separate submission, will not mar the practical operation of the remainder. This, however, is foreign to the question now under consideration. But with regard to the details of the provision proposed, it should be borne in mind that it is but temporary in its operation; that after the enumeration provided for by the report, the Legislature can, and as we are bound to believe, will correct any and all inequalities that may be then found to exist. Like inequalities of representation always have existed, and to some extent always must exist, and we shall have performed our duty if we make those inequalities as small as is practicable. But if the Committee of the Whole shall adopt the single district system, then I shall be in favor of giving more permanency to the Senate by retaining the recommendation of the standing committee of extending the term of office of Senators to four years.

Mr. BERGEN—I desire, sir, to occupy but very little time in this debate, but I have lived under both systems, the large district and the small district system, and I have taken an active part in nominations under both systems, and been a member of senatorial conventions in a district in which there was a large majority of the party of which I was a member, under both systems, and I have seen somewhat of the workings and operations of nominations, which generally in such districts amount to an election. In my judgment I have seen nothing gained by resorting to the large district in preference to the small district system. Instead of a gain, there will be, in my judgment, a loss. We have had good men and men of ability under the single district system. Under that system, almost every voter has a personal acquaintance and knowledge of the candidates. Under the other system, with a district spread over a large territory, the voters know nothing personally of the candidates, but they are compelled to take the judgment of others without exercising their own. There are evils, no doubt, in both, and there will be evils under any system you can devise. Perfection is not to be expected, and often in trying to avoid present evils we are but flying to evils unknown. In 1846, the general complaint was against large districts, both for the Senate and the Assembly. They had then experienced the evils of the large district system, and to reform those evils they resorted to the single district system. That was twenty-one years ago, and many of the present generation and many of the members of this body have never experienced the evils of the large district system. They look back at those other days, and think that by going back to the old system, they can avoid these present evils, but in my judgment they are mistaken, and instead of avoiding the

injustice corrected, either by the Convention, or by the committee who have made this report. For this purpose I have an amendment which I propose to introduce at the proper time, for the purpose of making this correction. This amendment, I think, will be fair to all localities. I strike out from the third district the county of Orange, and add to the third district the county of Albany, which may be called, as it were, the mother county of the third district, out of whose territory many of the adjacent counties have been taken—counties which for a long period of years have been associated with it. The amendment I intend to propose, reads as follows:

Amend the second section by striking out "Orange" from the counties named in the third district and "Albany" from the counties named in the fourth district, by inserting "Albany" among the counties named in the third district and "Orange" among the counties named in the sixth district; by striking out "Otsego" from the counties named in the sixth district and by inserting it among the counties named in the fourth district, so that those parts of the second section hereby amended, shall read as follows:

"The third district shall consist of the counties of Putnam, Rockland, Dutchess, Ulster, Greene, Columbia, Albany and Rensselaer.

"The sixth district shall consist of Orange, Schoharie, Delaware, Sullivan, Broome, Chenango, Madison, Cortland, Tioga, Tompkins, Chemung and Schuyler.

"The fourth district shall consist of the counties of Schenectady, Fulton, Hamilton, Saratoga, Washington, Warren, Essex, Clinton, Franklin, St. Lawrence and Otsego."

Mr. HALE—Mr. Chairman, the amendment proposed by the gentleman from Westchester [Mr. Greeley], and now pending, presents the question of the representation of minorities, or more properly speaking, a question which has recently been attracting the attention of statesmen in representative governments throughout the world—of personal representation. I should be very glad, Mr. Chairman, if the rules of the Convention would permit a fuller discussion in this committee of this principle than can, by any possibility, be compressed into twenty minutes. It is unfortunate, I think that, by a rigid rule of this kind, in a body assembled to consider proposed changes in the fundamental law of the State—proposals, the decision of which by us may affect the welfare of the State for a whole generation to come—we should have fettered ourselves by such a limitation. But such is the rule, and it must be complied with. I will, therefore, endeavor to condense my argument as much as I can, and in the brief space allotted to me present my views as fully as may be. What is the theory of democratic republican government? It is that the people are the source of power. In a pure democracy, the people themselves make their laws; and a republic is based upon a democracy, convenience only requiring that the people should, in making laws, act through their agents and representatives, and not in person. It is obvious that in a democracy, although the voice of the majority would prevail, yet the minority would be heard, would have a vote upon the adoption or rejection of every law,

and would influence legislation precisely in proportion to its numbers and character. It is equally plain, that a representative Legislature approximates the end for which it was designed, just in proportion to the completeness and exactness with which it represents the whole people—not the majority only, but *all* the people. No representative quorum can do this perfectly. But the nearer it comes to such perfection, the more truly is it, in fact, a government of and for the people. Now, under our present system, it is evident that this is done very imperfectly. Our people are divided into parties. Men's honest convictions lead them to prefer the principles of one party to another. It is found, practically, that in some parts of the State, one party is uniformly in a large majority, and in other portions the other party. To specify; the city of New York, the counties of Kings, Richmond, Westchester and Rockland are always democratic. St. Lawrence, Washington, Jefferson, Chautauqua, and most of the counties in the northern and western part of the State, are always republican. Republicans in the former counties, and democrats in the latter, are practically unrepresented. Republicans in Richmond and democrats in St. Lawrence have "no part or lot" in the legislation of this State. Members from their own localities do not represent them politically. Members from other parts of the State, of similar political views, do not represent their local interests. They are in fact without representation; and the misfortune is not theirs only, but the State's, for she is thus deprived of the benefit of the presence in her councils of some of her best and wisest sons. If this evil could not be remedied, we should have to accept it as one of the unavoidable evils incident to our form of government. But if it can be remedied without depriving any part of the people of any rights they now possess, and without impairing the principles of our government, and if thus a more perfect representation of the views of all the people can be brought about, we shall fail in our duty if we neglect to attempt the cure. This subject has been much discussed, especially in England and on the continent. Mr. Thomas Hare, an English lawyer of eminence, whose name is familiar as a reporter and elementary author, to my professional brethren on this floor, has devised a system for a more perfect representation, which has received the approbation of many of the wisest, most enlightened and liberal statesmen of England. The general features of his plan I will briefly state. He provides, first, for ascertaining the whole number of votes cast at any election for members of Parliament. This number, when ascertained, is to be divided by 654—the whole number of members of the House of Commons—and the quotient thus obtained, rejecting the fractional part, is the quota. Every candidate in the kingdom receiving a number of votes equal to such quota is entitled to a seat; and if then there is a deficiency, as of course there would be, the number—654—is made up from those receiving the greatest number of votes less than the quota. It will be seen that this system would lead to a waste of votes by a popular candidate receiving many more votes



should endeavor to bring into the Senate of this State, this great commercial State, this State wielding such influence as it justly does in the Union, her best men. I do not wish to say anything by way of personal comparison between the Senates we have seen convened in former days under the Constitution of 1821, and those we have seen under the present Constitution. I should do those who have served under the present Constitution great injustice if I condemned them by wholesale. I have known many valuable men in the Senate under the present Constitution; gentlemen of the highest honor and integrity, and who would honor this State in any position to which they may be elected. I believe I speak the general sentiment of the people—I certainly do, so far as I have communed with them in reference to this matter which has been the subject of agitation, and consultation by the people preparatory to the meeting of this Convention—that they look back with pride to those days when the Senate was selected from large districts. That was a time when standing in the Senate chamber you could see men all around you, any one of whom you would be willing to see placed in the executive chair, or to represent this State in the Senate of the nation. I believe that we are better able now, from our increased population, our advancing intelligence and the greater experience of our public men after a lapse of over twenty years, to collect another such body, and to perpetuate it. I believe we can elect a body of whom we, without reference to party but as citizens of this great State, shall be proud. I desire to see the operations of the elective franchise in that direction; and I think if we adopt the large district system and shall so arrange our districts that there be no unfairness in their formation, we shall present on this subject a system to the people of this State which they will hail with joy. I must say, however, in passing, that I do not approve of the distribution of the power in the formation of districts in the manner the committee have presented them. I wish to say a few words upon that subject for the purpose of calling the attention of the gentlemen of the committee who reported this article and of this committee at large, to some faults which are apparent upon the face of this proposition. Sir, however meritorious the theory may be, unless you can present a proposition to the people of this State that shall be just and fair upon its face, I do not believe it will have the least chance of being adopted as a part of the Constitution. There is no subject upon which communities are so jealous as that of political power. There is no subject upon which communities, residing in the same State and having common interests, will more pertinaciously contend than the apparent unjust abstraction of political power from one locality and conferring it on another. I cannot agree with the gentleman from Rockland [Mr. Conger] in the opinion that this distribution of power should conform to the material wealth of any part of the State. I prefer to fall back upon the good old doctrine—democratic and republican, too—the doctrine of representation of the people; and whether the district be large or limited in its resources I would measure its political strength by its population.

Now, sir, a word with regard to this view of the case. It will be perceived, if we look at the plan selected by the committee as the basis of representation, that the average population for a district, taking the number of Senators as has been proposed, is 415,000, a goodly number, and one, as I before said, which any gentleman in this State, of the highest position and the greatest attainments might well feel proud to represent. But, sir, how is this power distributed by the proposition of the committee. The city of New York has assigned to it five Senators, and still has a large surplus of 55,000 and some hundreds unrepresented. That is the first district, showing a lack of representation, equal to nearly one-half of the ratio, for each Senator, that being, according to this plan, 103,000. Then we come to the second district; there we find a surplus of 48,669 not represented. Those two districts (and we may as well speak out in language so that all can understand) happen to constitute the democratic part of the State *par excellence*, and there is a loss of representation to that part of the State in these two districts of more than 103,000 the ratio for an entire Senator. How is it with the rest of the State? The third district has a representative population according to this programme of 381,856, which is over 33,000 short of the ratio. The third district as it stands in this proposition will undoubtedly be a republican district. I have lived in that district as long as I have lived in the State I profess to know it. I have lived in it, under both the large and the small district system, and knowing as I do, its political character as it is generally shown in elections, I think there will undoubtedly be a republican majority in it. Now, sir, I do not, and would not, stand before this committee and ask that they should frame this proposition for a political purpose for the benefit of either party. But I do insist, in all fairness, that there should not be such a gross inequality between the representation of those districts that are democratic and those that are republican. We come then to the other districts, the fifth, sixth, seventh and eighth. In each of those districts there are large deficiencies in the representative population; in other words, the people in those districts, without having the ratio of 415,000 to a district, yet are allotted their full number of Senators, four to each district. If you omit the first and second districts and consider all the other districts proposed, with the exception of the fourth, they are republican, and they lack of population more than the ratio for one Senator. So that you have this most extraordinary state of things on the face of this proposition; that in the two southern districts, the first and second, which are democratic, there is a surplus population of more than 103,000, unrepresented, even allowing New York five Senators; yet in the northern and interior districts which are republican, you find they are fully represented, although they lack more than 103,000 of the ratio, for the full number of Senators apportioned to them; thus making this twofold inequality, working great injustice by refusing representation to a large surplus and by allowing it a large deficiency. Before I can support the system of large districts I desire to see this evident

hands of a nominating convention. But what was the result of this plan, imperfect as it was? It has given us some of the ablest and most useful men on this floor, who could not otherwise have obtained seats here. For several of the ablest members of the Judiciary Committee, on which it is my privilege to serve, we are indebted to this system; and so to this provision, are we indebted for the presence here of the learned chairman of the Committee on the Preamble and the Bill of Rights [Mr. Evarts]; the distinguished chairman of the Committee on the Right of Suffrage, who moved this amendment [Mr. Greeley]; the able chairman of the Finance Committee [Mr. Church]; the honored chairman of the Committee on Cities [Mr. Harris]; the eloquent and accomplished chairman of the Committee on Education [Mr. Curtis], and many others of the ablest members of this body, whom I might name. Not one of those gentlemen could we have had to aid us in our important work had we depended on the ordinary mode of electing representatives. I am aware that it is natural for those of us who live in counties where we are in the majority, to think it is unimportant whether our friends, who are not so fortunate, are represented. The complacent language of the minority report that the force of the tyranny of majorities has not, in fact, much foundation with us, "was a very natural expression of their feeling." And it is especially true, that some of our brethren along the line of the Erie canal, considering the air in the vicinity of that charming stream as favorable to wisdom and integrity, and eminently conducive to the development and capacity for leadership, are quite willing to get along without the aid of any republicans from New York or the other counties where democrats prevail. But the people thought otherwise, and were determined to enable some people besides those of us believing we were in the majority to aid in amending the Constitution. And is there any reason why men of that same class, as representatives of their fellow citizens, who agree with their politics, should not be allowed seats in the Legislature as well as in Convention? Another objection made is, that this plan will tend to destroy and break up party organizations. I am not one of those, Mr. Chairman, who consider the existence of parties as an unmixed evil. I think we must and should have parties in a free government, and the plan proposed will not break up or destroy parties. It will tend to do away with party tyranny. It will liberate the voter from the dominion of party, and not leave him a mere machine to record the edicts of a caucus or convention. And this I consider not as an end to be feared, but "a consummation devoutly to be wished." We have been spending a good deal of time in extending the suffrage. This amendment will give it some practical value. Still, Mr. Chairman, this is an experiment. I doubt whether it is wise to try it in both houses of the Legislature. I think there should be a distinction made between Senate and Assembly. The remarks made by the gentleman from Chautauque, upon this head met my full concurrence. I am, therefore, not sure that it would be wise to adopt the amendment so far as it relates to the

Senate, but I am in favor of the plan as proposed for electing members of Assembly, which will thus be made what it should be, the popular branch of the Legislature, representing the different members' opinions more fully and accurately than is possible in the Senate. I think, Mr. Chairman, that in this matter, as in all others, we shall look higher and further, than to consider the effect of an action upon present parties. Parties are temporary and their relative position uncertain and fluctuating. Principles are eternal and unchangeable. We who now consider ourselves as being in sympathy with the majority of the people of this State, may some time find ourselves in a feeble and powerless minority. The Constitution which we form, if accepted by the people, may stand for generations. Let us all endeavor so to construct it, that it will be just, fair and beneficent to all; that majorities and minorities will have their just powers and rights. Thus, and thus only, shall we be able to look back upon our labors here with satisfaction, and to feel thus all our lives that we have tried to render good service to the State and to the cause of representative government.

Mr. MERRITT — This subject was under consideration for a considerable time in the committee, and we came to the conclusion that it was not a system appropriate to our condition at the present time. The problem propounded is, in what manner the individuals constituting the entire community are to be represented, so that no class or interest shall be ignored? Mr. Hare's theory may be practical and work well in choosing the popular branch of the legislative body in a monarchical government, but not in ours. It proposes to do away with minorities, and if it should work as contemplated, there really would be none. Its adoption, then, must be urged on the ground that special industrial or other interests cannot, under our present system, be fairly represented and considered. Is that true? I believe the facts will warrant an entirely different conclusion. So far as I have knowledge on the subject, all respectful petitions and advocates have been considered and listened to with patience, and whenever the subject proved to be of sufficient importance to interest any considerable number of persons in its favor, it was sure to have advocates in the Legislature, and generally in larger proportion than it would be likely to receive under the new system, or than it would be entitled to in proportion to numbers. In this country parties are generally formed on great national questions, whose controlling influence is felt, not only in the selection of federal officers but extends to State, county and town officials, and constitutes the rallying cry in every closely contested election. The State government elected on national issues by the majority party of the State, has always been compelled by public opinion to bear the responsibilities, which have thus been sought and assumed, of caring for and guarding all the varied and important interests of the State. While we have a great diversity of interests, those of a local character have, as a general rule, been well represented in our legislative bodies. I will not say that they have been as well represented as they

than the number of the quota. To provide against this (and this is the peculiar feature of Mr. Hare's system), electors are permitted to vote by "voting papers," upon which the voter can put as many names as he pleases in the order of his preference, none of these voting papers to be canceled for more than one name in the list, and that to be the highest uncanceled name on the list; and when enough votes are appropriated to any one person to elect him, his name is to be canceled on all the papers not so appropriated. Mr. Hare's book on this subject (which is soon to be published in this country) presents the details of his plan, which my time will not permit me to give here. But in regard to it, I will quote that most eminent of writers on political economy and the principles of government, John Stuart Mill. He speaks of it in his "Considerations in a Representative Government" (page 153), "as a scheme which has the almost unparalleled merit of carrying out a great principle of government, in manner approaching to ideal perfection as regards the special object in view, while it attains incidentally several other ends of scarcely inferior importance." And again he says that "the more these works are studied, the stronger, I venture to predict, will be the impression of the perfect feasibility of the scheme and its transcendent advantages. Such and so numerous are these, that, in my conviction, they place Mr. Hare's plan among the very greatest improvements yet made in the theory and practice of government." It is my humble opinion, Mr. Chairman, that these encomiums are deserved—that Mr. Hare's system, in England, in its present form, and in the same form in our country, is feasible in practice. It was my intention to introduce an amendment applying this system, in principle, to the election of the Assembly of this State. I have concluded not to do so, however, for two reasons: first, I am convinced that neither the public mind nor the members of this Convention, have had sufficient opportunity to familiarize themselves with the novel features of this system to become reconciled to it; and secondly, because, with the little time that I have been able to bestow upon this subject, I have been, as yet, unable to find a mode for determining, in case of surplus, which of the votes cast for the successful candidate should be appropriated to him, and upon which his name should be canceled and the votes appropriated to the candidate named secondly on the voting paper. This difficulty arises solely from the system of voting by secret ballot—a system the soundness of which I greatly doubt, but which now probably stands too high in popular favor to be disturbed. Mr. Hare's plan, however, if put into operation, would more effectually accomplish the great end had in view, and insure the most perfect system of representation that has yet been devised. But passing this as now out of the question, let us come to the consideration of the plan proposed by the gentleman from Westchester [Mr. Greeley]. This amendment embodies what is known as the cumulative system of voting, by which, each voter may cumulate his votes, giving a number of votes equal to the whole number to be elected, but with the privilege of repeating (or cumulating) his vote upon one man or any larger number

less than the whole number to be elected. This system, too, originated in the old world. It has been advocated in England by Mr. Mill, an extreme liberal, and by Earl Grey, an extreme conservative. In this country it has been advocated in the Senate of the United States, as applicable to the election of Representatives in Congress. It equalizes representation less perfectly than Mr. Hare's system, but more simply and with less machinery and less novelty. I am in favor of it in principle, though not even sure but its details may be improved, as a step in the right direction, in the hope that it may ultimately lead to the adoption of something better. By it, if the proposed amendment is adopted, any party able to poll one-third of the votes in any district, is sure of being able to elect one Representative. To illustrate: suppose the whole number of voters to be 15,000, whole number of votes will be 45,000; suppose the minority is 5,000 and they cumulate on one man; he will receive three times 5,000, equal to 15,000 votes, or one-third the whole number, and must be one of the three Representatives. If the number should be five from each district, then of course one-fifth could in the same way be sure of electing one Representative. Now let us consider the objections made to them, or to any system which represents minorities. It is said to be a revolution of the principle that the majority shall rule. I deny it. The people will rule under this system, and the majority will prevail as truly as now. It will only give local minorities a chance to be heard. It is said that it will destroy local representation. My answer is that local representation will be retained just as far as is desirable. The people of the respective localities will take care of that. But the people, and not acres of land and piles of brick and mortar merely, will be represented. But it is said by some that the people do not demand any such change. Let us see. The people demand a better class of legislators and better legislation. Unless the public ear is scandalously abused, our legislators, as a class, are neither honest nor wise. The people have sent us here, among other things, to devise some way of insuring wiser and more honest legislators and legislation. Any plan, which is likely to do this will meet their approval. This plan will do it. It will make the majority more careful whom they nominate. They will fear to nominate rogues or fools for fear of defeat by a bolt from their own party. It is said it will give the State the benefit of the services of men of talent and integrity, now kept out of public life by the accident of their residence in the district where they are in a minority. And we have evidence among ourselves that the people do demand a minority representation. For the express purpose of enabling minorities to be represented, the Governor of this State, in his message last winter, recommended the election of thirty-two delegates at large, each voter to vote for only sixteen. And this suggestion was approved by the people and adopted by the Legislature. It was an imperfect and objectionable method of attaining the result, which a system like the one now proposed would have accomplished in a comparatively perfect and less objectionable manner. It left the whole matter virtually in the



they did in the city of New York and in the second district. Now, in regard to the various majorities. They have varied from time to time in these several districts. In some of these districts in 1864 the majority went one way, and in 1860 they went the other way; the figures being very close in them. If we were to take the number of electors that have been returned, as a basis, you would find an entirely different result, that of excluding aliens or any other portion of the population. If you take into account all these elements which go to make up the body which should be represented in the Legislature, I say these figures show that the committee had no political design to make any such predominance of control of the party now in power for the future. I might be allowed to say further that my view of changing the mode of election from small to large senatorial districts is based upon the consideration which had led gentlemen, and, I believe, the people, to desire that large districts should be restored. But, I believe, in a strict party sense it would be better for the republican party to retain a single district system if you take into account simply numbers. I believe that the result will show in the future, as it has in the past, that assuming the political parties to be divided as they are at the present time, the party to which I belong would send into the Legislature a larger proportion than we would be strictly entitled to; and take into consideration the division of the majorities under the large district system, it is a conceded result as shown, that the first and second districts would elect democrats, with doubt as to the result in the third, and the other five would very likely elect republicans. We, therefore, get in the division of the State into large or small districts a larger number of Senators than we would if we were to take the aggregate vote of the whole State. Therefore, if it is claimed that the object of recommending the large districts was looking to the future, with reference to political considerations, we must have been blind indeed to make the recommendation we did, when, in my judgment, the single districts would do better for our party than the larger districts. But I may be allowed to repeat some remarks I made yesterday, that I believe we can with larger districts, lengthened term, and increased compensation, elect men of prominence and purity, and by that means we would raise the dignity of the Senate so that it would be the pride of our State instead of a reproach. There is really no difference between a position in the Assembly and that in the Senate. A prominent man in St. Lawrence county [Mr. Hulburd] said, not long since, when asked to be a candidate to the Senate, that he would prefer being in the Assembly than in the Senate; that he regarded the dignity of an Assemblyman as equal to that of a Senator. He was, therefore, elected to the former body in 1861. Now, sir, while I am not tenacious about the manner of electing Senators, I am anxious to have the character of that body elevated and improved, and whatever I believe will tend to that result will meet with my hearty approval and support.

Mr. DUGANNE—I am at a loss whether to look upon the proposition of the gentleman from

Westchester as an exemplification of universal suffrage or of universal amnesty. Certainly it appears to me as one of those extraordinary exhibitions of political magnanimity which are peculiar in theory, and not sensible and not just in practice. I confess, Mr. Chairman, that I am a believer in the representation of majorities rather than minorities, and I believe it is a democratic doctrine, and a doctrine which is essential to the perpetuity and the strength of the republic, that the majority should rule and that the minority should be represented only as far as they can be. The majority of to-day, in a well constituted republic, may be the minority of to-morrow, and the minority of to-day may be the majority of to-morrow, and it is proper that such a corrective should be accessible to the people at all times; so—if a majority of this State shall embody in its partisan rule such principles or such measures as are unjust—that the next year the minority shall have power to correct the wrong by overturning the injurious majority. It is the principle of democratic rule, and I do not believe at all in this representation of minorities, which is, I am aware, an exotic of English growth. Sir, it may be very well in England, where there are distinct file leaders of divided social and political interests—where the aristocracy on one hand and the democratic population on the other hand, are two absolutely antagonistic forces. But, in a representative republic, under a democratic government—a government of the people—we need the corrective power of majority rule. And what would be the effect of this minority representation, so called, in some respects? What would result from carrying out the principle of the gentleman from Westchester [Mr. Greeley], through certain obvious deductions? Sir, I can fancy a case where the minority might become the majority, and might elect two out of the three candidates proposed. Supposing that, in any one locality there are twenty-five thousand republican votes, and that the strength of the democracy in that locality amounts to twenty thousand votes, what prevents the executive committee—the leaders of that democratic minority—from printing ten thousand tickets with one name repeated three times upon each ticket, making thirty thousand votes, and ten thousand other tickets, with another name printed three times on each, amounting to thirty thousand votes more, thereby electing two candidates out of three, while the majority must be content with but one candidate, chosen by its twenty-five thousand votes? I do not think that this could be deemed a representation of minorities, in the sense which the gentleman would have us receive it in. I believe in coming down, in all of our deliberations, to the first principles of democracy, of true republican democracy, which should govern this Convention; and if we have receded from them in any particular in the existing Constitution, or in former Constitutions or laws, it is for us here, in our delegated capacity, to correct all wrongs and restore all rights to the people. Sir, I do not believe in going back to the old Constitution or to any theory or practice in political matters anterior to that Constitution. I do not believe

might have been; but the fault, if any there be, lies with the people themselves. Our present system, which is adopted in all of the States of the Union and indeed in all republican governments, contemplates minorities; and the larger such minorities are, the greater will be their restraining influence on the majorities. It is this that holds the ruling power to its accountability. where parties are nearly equally divided, the public good must be the ostensible object sought by each. Under such a system as ours, therefore, the great majority of the people and all the varied interests of the State will be represented and promoted. Mr. Hare has accepted ours as the true basis of popular government in contradistinction to governments of the aristocratic or monarchical form, but opposes our theory of elections on the ground that majorities are capable of greater oppression to minorities "than can be apprehended from the domination of a single superior." Our present system insures some policy in government. The one proposed, confusion in the elections and in the legislative body. The very thing he proposes to do away with is essential to us in our present condition, and will, I have no doubt, be required for a long time to come. Mr. Hare quotes with approval Mr. Burke's statement, who says, "that neither England nor France without infinite detriment to them, as well in the event as in the experiment, could be brought into a republican form; but that everything republican which can be introduced with safety into either of them must be built upon a monarchy—built upon a real not a nominal monarchy as its essential basis. In monarchical governments all institutions, either aristocratic or democratic, must originate from the Crown and in all their proceedings must refer to it; and it is by that mainspring alone those republican parts must be set in motion, and also from thence derive their whole legal effect (as amongst us they actually do) "or the whole will fall into confusion." It is from this stand-point that all reforms in the Old World have thus far been inaugurated and conducted. Not so, however, in our Republic. Here all power emanates from the people, to be prescribed and enforced in accordance with their will, under such reasonable forms and regulations as the common judgment and experience shall declare to be adapted to the merits and necessities of the whole State. Having thus argued against the system as objectionable, it is hardly necessary to show the difficulties in the way of its adoption. It might perhaps be applied, with some degree of success, in small districts or municipalities; but its complexity would make it difficult to be understood by the voter, and then there would necessarily be great opportunities for fraud by the returning and canvassing officers, especially so when estimating the number of votes given as second or third choice. I wish before taking my seat to call the attention of the committee to an argument raised in reference to the apportionment of the senate districts. It has been claimed that the committee must have taken into account the political complexion of those districts. I disavow, on the part of the committee, so far as I am concerned, any such consideration. It might have been an omission on my part, that I should thus neglect

to take into account and consider the special political majorities. Since the discussion was had yesterday, I have taken pains to look over the election returns, in that regard, and I desire to present to this committee, if they will have patience, some of the results of that investigation. It has been claimed here in the discussion of the report of the Committee on the Right of Suffrage, that the true source of government rests in the electoral body; that those who have a right to cast a vote are to cast such votes for themselves; that the majority of the political power shall govern by the expression of that body. We have not yet claimed that any man has a right to represent any other man but himself; and that nothing should be taken into account as the measure of political power but that. I would not say that this rule should be applied to the question of apportionment, but as regards the estimated strength of parties it is proper to be taken into account. I will premise by saying that the election of 1866 was as closely contested as any we have ever had in this State, and equally so with the election of 1864, although there were not quite as many votes polled as in that year. In 1866 there were 718,841 votes in the State of New York, and in the city of New York, which we have constituted one district, there were polled that year 114,169 votes. Divide that by the number of Senators which we propose, and which will give as the senatorial representation quota 21,783 votes, or 87,132 as the quota for a senatorial district having four Senators. There were cast last year, in the first district, only an excess over the proportion of five Senators, of 5,254 votes. The second district, about which there has been so much said relative to excessive population, there was not cast a vote equal to its proportion. There was a deficiency of 2,962 votes. The third district did not cast its full proportion, for there was a deficiency of 6,032 votes. In the fourth district there was an excess of 768 votes. In the fifth district there was an excess of 5,422. In the sixth 7,458, polling at that election 94,588 as against 87,132, which should be her proportion of the electoral vote. The seventh district had a deficiency of 6,575, and the eighth had a deficiency of 3,599. Now, taking into account the actual number of electors as returned by the census of 1865, New York city has 128,975; her proportion on this census, upon which we are operating, would be 124,760, leaving only a deficiency of 4,215, that is, if you take into account the actual number of voters as given by the census of 1865. They will be, therefore, represented within 4,215, and what they would be entitled to under the proposed apportionment. The second district has 106,035, the proportion of voters is 99,808, making an excess of only about 6,227. But these votes are never fully polled, and if you go into the number of votes cast at any closely contested election you will find it is a fair measure of the interest taken by the electors in the result. It is proper to take this into account when considering the question. The third district has 91,162. The result of this examination shows that in all the rural districts they cast more nearly their proportion of the votes than

at least, who is to represent him in the Legislature of this State. I, for one, after hearing the many complaints made against the Legislature for corruption on this floor, want to know from personal observation, or at least from neighborhood report, whether the man for whom I am to cast my vote is an honest man, or one who would be likely to be tempted by a bribe. I should prefer that the State be divided into forty-five senatorial districts, and each district be entitled to one Senator, whose term of office should be three years; that the districts be so arranged that one-third of the districts elect each one Senator every year, and so that each county containing 85,000 inhabitants or more be entitled to be represented by one or more Senators, each Senator would then represent as many inhabitants as a Senator has heretofore represented under the former Constitutions of this State. I therefore hope that the plan recommended in the report of the committee will not be adopted.

The hour of two having arrived, the President *pro tem.* [Mr. Alvord] resumed the chair in Convention, when the Convention took a recess until half-past seven o'clock.

#### EVENING SESSION.

The Convention re-assembled at half-past seven o'clock.

Mr. MERRITT—I have a resolution I would like to offer, which I think is of a privileged character. It is well known that the President of this body, as also the President *pro tem.* [Mr. Folger], are absent, and cannot attend the sittings of this Convention, perhaps for several days to come. I think it is very proper, we should have another President *pro tem.* and I therefore offer the following resolution:

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the Hon. Thomas G. Alvord be and he is hereby appointed President *pro tem.* in the absence of the President, Mr. Wheeler, and the President *pro tem.* Mr. Folger; and the Secretary is hereby directed to officially notify the Comptroller of this appointment.

The PRESIDENT *pro tem.*—The Chair will inform the Convention before putting the question on this resolution, that under the rules of the Convention the Chair cannot hold its present position any longer; that the two days for which it holds the position, by the request of the President *pro tem.*, will expire this evening, and it may be that the President *pro tem.* will not arrive here this evening.

The question was then put on the resolution of Mr. Merritt, and it was declared adopted.

The Convention then resolved itself into the Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc., Mr. ARCHER, of Wayne, in the chair.

The Chairman announced the question to be on the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. PRINDLE—I have not heretofore occupied much of the time of the Convention, or of the committee, nor do I intend to, but I have a few thoughts upon the propositions before the Committee which I wish very briefly to submit. The

gentleman from Rockland [Mr. Conger], in the discussion of this proposition yesterday, seemed to carry the idea that the committee in excluding aliens from the basis of representation had been guilty of a very startling innovation. I think in the course of his remarks he said something about the committee having brought in a project, or a proposition, the effect of which was to crush out the foreign population of this State; and in order to sustain his position, the gentleman quoted from the Constitution of 1846, and placed a construction upon the clause relating to the basis of representation which I never heard placed upon it before, and I do not believe that any gentleman of less ingenuity than the gentleman from Rockland [Mr. Conger] would have ever thought of placing such a construction upon it. The section is as follows:

"The members of Assembly shall be apportioned among the several counties of this State by the Legislature, as nearly as may be, according to the number of their respective inhabitants, excluding aliens and persons of color not taxed, and shall be chosen by single districts."

And the gentleman claimed that it was the true and proper construction of this language, that aliens who were taxed should be included in the basis of representation. On looking at the Constitution of 1777, I find that the electors of the State are made the basis of representation, and electors alone. On looking at the Constitution of 1821, I find that "aliens, paupers, and persons of color not taxed" are excluded from the basis of representation, and on looking at the debates of the Convention that framed the Constitution of 1846, I find there is no sort of pretext or excuse for placing such a construction upon this portion of the Constitution. The committee in the Convention of 1846 that had this subject in charge, reported the phraseology precisely as it was in the Constitution of 1821, excluding aliens, paupers, and persons of color not taxed. A motion was made in the Convention of 1846 by Mr. Chatfield, of Otsego, I think, to strike out those words, "aliens, paupers, and persons of color not taxed," and it was subsequently withdrawn except in regard to paupers. That motion was renewed by the Hon. Mr. Bergen, who is also a member of this Convention. On motion of Mr. Baker (I think it was) the question was divided, and it was taken in that Convention distinctly upon the question of striking out the word "aliens," and, sir, it was lost, only twenty members in the whole Convention voting for striking out the word "aliens." Then, sir, on looking at the debates of the Convention of 1846, I find that no one person even suggested the idea that aliens taxed were to form a portion of the basis of representation. Nobody thought of it in that Convention, and, as I said before, there is not the slightest excuse for placing any such construction upon it. Now, sir, in view of the precedent established in 1777, the precedent established in 1821, and the precedent established in 1846, I ask you, Mr. Chairman, what justice or what fairness there was in accusing the committee of this innovation, and this attempt to crush out the foreign population of the State? The gentleman also alluded to the wealth of the great city



in taking from the people one iota of that power which the people have reserved to themselves or delegated to individuals. I do not believe in the system of large districts, as regards the popular branch of our Legislature. I am aware that our republican government is a system of checks and balances; and, therefore, I do not care how you constitute your Senate, or how large your senatorial districts shall be; you may constitute it as you constituted a portion of this Convention, by the election of delegates at large, and thus elect your Senate from the whole people of the State. But, sir, I contend that we must consult the interests, the strength, and the rights of the whole people of the State, and we must come down as near to the people as it is possible for us to do, and, at the same time, obtain a proper representation. Twenty years ago, the people were left by the Constitution to elect their representatives from single districts, at a time when they were but partially educated in the knowledge of a republican form of government. Now, it is a poor compliment to our common-school system, if we cannot intrust the sole power to the people, after twenty years of education. I do not believe in going back at all. My motto is progress for the people—progress commensurate with education; and if we educate the people to the point where they can understand politics, and understand politicians, we need not fear to intrust them with the election of their own representatives from circles as near to their homes as may be possible. Sir, if I desired an agent to transact business for me at a distant point, I should take care, if possible, to secure a man who is known in the range of my business acquaintance as a true man, an honest man. I should not take some person from another city or another portion of the country whom I did not know. I think that the people of small districts, in electing members to the popular branch of the Legislature, ought to be governed by the same desire. We should take those men whom we know, and I believe that we can find in our circles of acquaintance, men whom we can trust, and who are known to us more thoroughly than any man can be whose residence is remote from us in the district or county.

Mr. YOUNG—I think the plan submitted by the committee is objectionable in every light in which it can be viewed. It is objectionable for the reasons assigned by the gentleman from Richmond [Mr. K. Brooks], by the gentleman from Rensselaer [Mr. M. L. Townsend], and the gentleman from Orange [Mr. Fullerton]; and in addition to the reasons assigned by them, I think it is objectionable in its political division of the State into senatorial districts. Taking the vote cast at last fall's election for a basis, the political majorities in the several senatorial districts are as follows: The first district gave a democratic majority of 46,266; the second district a democratic majority of 10,244, making a democratic majority in the first and second districts of 56,510. The third district gave a republican majority of 3,085; the fourth district gave a republican majority of 17,475; the fifth district gave a republican majority of 12,476; the sixth district gave a republican majority of 12,566; the seventh

district gave a republican majority of 12,022; and the eighth district gave a republican majority of 15,356. I made this calculation from the vote cast for State Prison Inspector, believing that the vote cast for that office more nearly represents the party strength in the several districts than any other. Thus the Convention will see that the first and second districts, with a democratic majority of 56,510, can only elect nine Senators, while the other six districts, with an aggregate republican majority of 72,883, will elect twenty-four republican Senators, for the reason that the republican majority in those districts is nearly evenly divided between those districts. Now, sir, we have inserted a provision in the second article of our proposed Constitution, prohibiting bribery and corruption at the polls, but we have adopted no provision as yet to prevent corruption and bribery at the nominating conventions. It must be obvious to every person present that a nomination in each of these districts will be equivalent to an election, and it is easy to imagine the means that will be resorted to by the contesting candidates to secure a nomination. Now, sir, in my humble judgment the sovereign power in a republican government is vested in the people. We the people are the sovereigns, and our representatives in our State Legislature or in the Congress of the United States are our legislative servants, selected by us to represent our sovereign will in those two bodies. Now, sir, if it is bad policy to have the State divided into districts small enough to enable the Representatives to know and understand the wants and interests of their constituents—if it is bad policy to have the people directly and fairly represented in these halls—then we had better retrace our steps and return to the old monarchical system and proclaim to the world that with us a republican form of government has proved to be a fallure. Why, sir, the people are more nearly represented in the Congress of the United States than they will be in the Legislature of this State by the plan submitted by this report. The city and county of New York, a city representing almost the entire commercial interests of this State and containing nearly one-fourth of its inhabitants, is but one assembly district and one senatorial district, while it is divided into six congressional districts and each Congressman represents particular wards and districts of that great city. The county of Kings, sir, is divided into two congressional districts, while by the plan submitted in this report, it is but one assembly district and a fractional part of a senatorial district. The counties of Erie and Oneida are each but one assembly district, and each but a fractional part of a senate district, while each of those counties are congressional districts. Besides, sir, the fourth senatorial district is to comprise one-third of the whole territory of the State of New York, and the electors will know but little more of the personal character of the nominee for honesty and integrity, much less of his intellectual qualifications, than if he was nominated from the State at large. I believe, sir, that every elector in this State desires to know personally, if possible, something of the character of the man, for common honesty

cerned. Now, sir, in regard to the election of a Governor, in regard to the election of State officers, in regard to the election of a President of the United States, we do elect men that we know; we elect men who have been before the public for a long period of time, and we know them by the record that they have made. We know them by their acts and by what they have done before the people of the State of New York, but it is not necessary that we should take men for Senators who have had a large experience; we must necessarily take some men who have had a limited experience perhaps in legislation, and by that means perhaps often get the very best men. I am in favor, sir, of a conservative Senate. I am in favor of a Senate that will be a check upon the other branch of the Legislature. I know that there are times when the people perhaps may go a little too fast, and when the representatives elected annually by the people, coming fresh from the people, may be inclined to be a little rash and to go too fast in a time of high political excitement. But, sir, I would make the Senate conservative by electing them, if you please, for a longer period of time, by allowing them to be elected for four years, and have them arranged in such a manner that one would be elected annually, if you please, so that there may be a fresh infusion each year from the people into the body of the Senate. I do not see why that would not preserve the conservatism of the Senate, and make it a sufficiently conservative body. But, sir, suppose you elect from large districts in this State, and suppose there should happen to be what is sometimes called a "regency" here in the city of Albany, extending throughout the State, having its agents and instruments in every county in this State; suppose that regency gets the entire possession, and succeeds in controlling the nomination and election of Senators, they must, under that arrangement necessarily, to a large extent, control the action of those Senators when they come to take their places in the body of the Senate. With such a power as this, sir, they would almost necessarily elect the Governor; and if important officers are appointed by the Governor, and confirmed by the Senate, they would in a large measure control the whole of those officers—

Here the gavel fell, the gentleman's time having expired.

Mr. MERWIN—I desire, Mr. Chairman, to state briefly, the reasons that induced me, as one of the Committee on the Organization of the Legislature, to concur in the proposition to elect Senators by large districts. Under the present Constitution, the Senators are all elected at one time, and of course, all go out of office at one time. And therein is the defect. I have no fault to find with the present Senate districts, or with the number of Senators or their general character and standing, except this liability to have an entire new set of men every two years. It is this possible, and in practice, usual lack of experience in the members of the Senate that in my mind condemns its present constitution. As a matter of fact, not one quarter of the Senators are re-elected, and the new members must be engaged for one-half their term in learning how to do their duty. The institutions of our State, from their

magnitude and variety, require a patient and long examination in order to be well understood and properly criticised and governed. The extent and bearing of all our varied public interests which require legislation, cannot be comprehended in a day or in a month, and therefore it is that a body, intended in our republican theory of government, to be a conservative, restraining and revising power, should be so constituted as to be always composed of a majority of men of experience. This is one of the first elements, if not the first, that should be attained. The plan proposed by the committee is deemed the most feasible way of accomplishing this all important result. I should personally be satisfied if the State were divided into sixteen senate districts having two Senators each, and electing one every two years, thereby resulting in having always one-half old and experienced members. In 1846 the Committee on the Organization, etc, of the Legislature reported that thirty-two Senators should be elected for two years in single districts, but in order to allow the element of experience which they deemed necessary, they provided that elections should be had in one-half the districts every year. This was objected to as giving opportunity for colonization and fraud, was called the *ride and tie* system, and was abandoned. I think the arguments there used and which are to be found in the reports of that body, will convince any man of the lack of feasibility in a system of elections for State officers only in one portion of the State in a year. That Convention lost the opportunity of having experienced men in the Senate, but gained uniformity in election. I think the experience and observation of the last twenty years have convinced the people that we need a change in this respect in order to accomplish the results aimed at in having a Senate at all, and I, therefore, shall support the plan of the committee or any other that will accomplish the same result. If we look at the Constitutions of the other States as to the term of office of Senators, we find that in sixteen States the term of office is four years; in twelve States it is two years, and in six States — being the New England States — it is one year; but in the majority of all the States it is so arranged that they shall not all be elected at one time. It may be proper also for me to state here that I am opposed to this body making any apportionment of the State into senate districts. I think that is a part of the duty of the Legislature. It is a matter of detail that we have no business with. It will only incumber the Constitution, and it is unnecessary for us to do it; and there is another and a stronger reason, which is, that the moment we start to apportion we step into the political arena; we leave our province as Constitution makers, and place ourselves where motives of policy or partisanship will almost inevitably be charged upon us. We will thus unnecessarily disturb the harmony of our deliberations, and descend to the level of a mere political Convention. It will be besides an entire waste of time. Certainly, that we cannot afford now. We can, very likely, agree upon principles. We can lay down general rules for the government and guidance of the State, but the moment we come to a matter of detail, like this apportionment, we

of New York, and its surroundings. I do not know for what purpose; I cannot understand for what motive, unless it was because the gentleman is in favor of the principle of property qualification. I trust, sir, that we have got beyond that. But the gentleman must be either in favor of the principle of property qualification, or else his words amounted to nothing, and were entirely meaningless in this discussion, when he alluded to the large amount of property in the city of New York. Why, sir, we of the country might as well allude to the broad acres that we possess, and say that our representation ought to be increased because we have these broad lands, whilst those in the city are pent up within narrow limits. I claim, sir, that the true basis of representation, and the philosophical basis of representation is the electors of the State. They have the political authority of the State. I know, sir, that it may be inconvenient, it may be impracticable to allow the census taken to determine who the electors are, and perhaps it may be as well, and will be substantially correct to base the representation upon all the citizens of the State of New York. But, sir, I claim that there is no foundation for the idea or the claim, that aliens should be counted as a portion of the basis of representation. I believe, sir, that every elector ought to be equal, and have equal political power in the State of New York, whether he lives in the country or whether he lives in the city, whether he lives among aliens or whether he lives elsewhere. Sir, this is a representative government, and who are the persons that are represented in the Legislature and in the Senate of this State? They are those, sir, who send their representatives to the city of Albany to act in their place and stead. Senators are not sent here, sir, to act in the place of aliens. Why do we send representatives here at all? It is because the body of electors find it inconvenient and entirely impracticable to come here and transact their business, and perform acts of legislation, therefore they select men as their representatives, not as the representatives of aliens to come here and transact their business for them. And I believe, sir, as I said before, that the true basis is the electors themselves. In regard to the large districts which are proposed by the committee, although I would like very much to agree with the report of that committee, I am compelled to say that I have not been convinced of their propriety by the arguments that have been adduced here. I have great respect for the ability and the integrity of that committee, but yet, Mr. Chairman, I feel bound to act upon my own judgment, and to do what I believe the interests of the great State of New York require. And sir, I am opposed to these very large districts that have been proposed by this committee for the same reason that the gentleman from Rensselaer [Mr. M. I. Townsend] expressed himself as opposed to those large districts, because I think I can see that it will take the power out of the hands of the people, and throw it into the hands of the politicians. Now, sir, what will be the political workings of this system? The gentleman seeking a nomination in a large district (embracing twelve counties perhaps, as the district in which I am placed does), will look around in the first

place to find his friends to procure him the nomination, and to whom would he go? It would be utterly impossible for him to address himself to the people at large to any particular extent. He must necessarily go to the politicians for his support and for strength to procure him the nomination. And, sir, it does seem to me that there would be what I have heard termed a "regency," established in this State, having naturally its head-quarters at the seat of government, here in Albany, which would reach out its long and meddlesome fingers into every district in this State, and would control the nomination and election of Senators in nearly every district. The gentleman from Rensselaer [Mr. Seymour] says it is necessary that the Senate should be a dignified body, and that Senators elected should be men of reputation. I believe too, sir, that they should be men of reputation, and men of ability, and men of integrity, but, sir, I do not think it is absolutely essential that they should be possessed of that doubtful reputation which is manufactured by the newspapers of this State. I would prefer, sir, a man who has a reputation at home, a man who has a good reputation among his fellow townsmen in his own county, and in the adjoining counties, that he has acquired by his acts and dealings among his fellow citizens day after day, and I believe, sir, that that is a more substantial reputation than a reputation that is often acquired through the newspapers. I think I can see, sir, how, in this large district system, a great man could be made very quick, if it was necessary, in order to put him in nomination for a Senator. It would be only necessary, sir, to publish an article in the newspapers, and send it afloat in other papers interested in the same projects in this State, and a man might spring from a common man to a great man, almost like a mushroom, in a single night, and he would become the only man that could justly and properly represent his district in the State of New York. I claim, sir, that the people in these election districts ought to have the privilege of knowing the men whom they are to send to the Legislature. We act, sir, upon this principle in all our business affairs, in all the ordinary transactions of life. We do not, in a business point of view, trust a man with our dearest and most important interests unless we know him ourselves. We do not take the reputation that is so easily acquired in the newspapers. We do not take the say-so of politicians, but we act upon our own information and upon our own knowledge. I believe that in the Senate districts as they are now organized, and in each of them, there are men of intelligence, and there are men, too, of integrity, sufficient to act as Senators in this State without embracing too many counties or too much population in these large districts. Sir, the best representation we have in this State is in the board of supervisors, where the people of the town know their men—the very best representation we have. There, sir, in the primary meetings the people get together and nominate the men they want, and the men that they know, and they nominate capable and trusty men who perform the duties of their situation well and faithfully, so far, I believe, at least, as the county districts are con-



barassing task of making this arrangement of senate districts? If it be made by this body, it will be but in the first instance—at the next enumeration it will necessarily devolve on the Legislature to make the re-arrangement which will become unavoidable. Why not have the Legislature do it in the first instance as well as subsequently? I hold that this arrangement of senate districts is a legislative act. The Constitution of twenty-two States of this Union, which I have examined, are free from the absurdity of having senate districts crammed into them. The province and the only province of this body is to issue its mandate to the Legislature, prescribing the manner in which this service shall be performed, and when this is done, the proper functions of this body cease. I hold it right, therefore, that we should refrain from the attempt to incorporate the senate districts into the Constitution, and thus save the time it will waste and the annoyance which will ensue. It is not only right, Mr. Chairman, but it is politic. The discussions which have already been had must satisfy gentlemen on this floor that when we enter upon this discussion of making suitable senate districts—when we attempt to make them with the most honest and earnest desire to conform to every right and protect every interest, we encounter serious objections and prejudices: and whatever may be the fate of this Constitution at the hands of the people, I venture this prediction, that if this Convention thrusts into the body of it these senate districts it will cost thousands of votes on the question of its adoption. We must necessarily encounter the prejudices of location and the real or fancied inconveniences which must necessarily occur. If angels were to form those senate districts they would, in the estimation of some men, be imperfect. They would encounter the hostility of many portions of our State, which would manifest itself at the polls. My project, Mr. Chairman, rightfully and appropriately, it seems to me, refers to the Legislature this work of arranging these senate districts and defining the time within which that service shall be performed. They should be of convenient and contiguous territory, and they should, as near as may be, be of an equal number of inhabitants, excluding aliens, and in this I adopt the text of the old Constitution so far as aliens are concerned. Under it, I hold, Mr. Chairman, we shall attain every practical result sought for by the advocates of the large senate districts. We shall have the service of men in that place for four years, and the only difference is that instead of electing one Senator in each of eight senate districts in each year, we shall elect them in the order I have named, or in some other order which shall substantially conform. Thus if this section is adopted, and the Constitution be approved also, at the first election of Senators which would occur, the whole number would be chosen. At the end of the first year, Senators would be chosen in the second, fourth, sixth, eighth, tenth, twelfth, fourteenth and sixteenth senate districts. At the end of the second year they would be chosen in the eighteenth, twentieth, twenty-second, twenty-fourth, twenty-sixth, twenty-eighth, thirtieth, and thirty-second districts. At the end of the third,

in the first, third and fifth, and so on up to the fifteenth, and in the fourth year in the seventeenth, nineteenth and twenty-first, and so on up to the thirty-first district, and then continuing in rotation in this order. I offer this proposition, Mr. Chairman, and make these suggestions as a contribution in the direction of helping us out of the embarrassments which are surrounding us, and which I am sure will increase as this discussion goes on, especially if the attempt be persevered in by this Convention to form these senate districts of this State. As I said in the outset, sir, the substitution is not in order now, but if favorably received I will offer it as a substitute for the amendment moved by the gentleman from Cortland [Mr. Ballard] at the proper time.

Mr. KERNAN—Although it was not my intention to take any part in this discussion at this time, nevertheless as no other gentleman seems desirous of occupying the attention of the committee, I will ask leave to make a few suggestions. The object, as I assume, of vesting the legislative power of the State in two bodies, is that one may be to some extent a check upon the other. The Senate, the smaller body, should be so constituted, in my judgment, as that it shall possess different characteristics from the House. It should be so constituted that it shall have more of stability and permanence, and less of local prejudice and local interests; so constituted as to be influenced less by popular and temporary excitement than the other branch of the Legislature. In a word, the members of the Senate should represent to a greater degree the interests of the State and the entire people, than does the more popular branch of the Legislature. And in organizing the Senate we should endeavor to so organize it that it shall have these characteristics. The scheme of the committee which has been laid before us, is that the State shall be divided into eight large districts, in each of which four Senators shall be elected whose term of office shall be four years, and so arranged that a quarter of the body shall go out each year and the people elect others to supply their places. The plan proposed by the gentleman from Cortland [Mr. Ballard], as an amendment, is that we shall have thirty-two comparatively small districts, and one Senator elected in each, whose term shall expire at the end of two years. By this plan as I understand it, all the Senators will come into office at the same time, and the terms of each expire at the same time. In my judgment, sir, the principle which underlies the plan of the committee is preferable with a view to make the Senate what it should be. There is no object in having substantially two Houses of Assembly or two branches of the Legislature, each having substantially the characteristics of the other. It seems to me that the plan of the gentleman from Cortland [Mr. Ballard] makes the Senate substantially what the Assembly is. It is true that the term of office is to be two instead of one year, and the district is larger than the assembly district, but the Senator will be in effect a mere local representative, and the body will not have the permanent character which it should have. By electing Senators from large districts for four years, with only one-fourth

are all afloat with one hundred and sixty pilots to guide us, all of whom think they are right, and that their own localities must be attended to. Reference has been made by the gentleman from Essex [Mr. Hale] to a remark of mine about the tyranny of majorities in a report that was made by me. My remark, in that connection, was this: "The ingenious theories of Mr. Hare, are more adapted to the evils of the British system than our own. His fear of the tyranny of majorities has not much foundation in fact with us." Now, then, what was his fear and its basis? It was the fear that if the great mass of the people, the democracy as he terms them, had once the reins of power in their hands, they would oppress and tyrannize over the other classes of community, the more educated, or intelligent, or wealthy; and in the minorities which he speaks of, he always places the more intelligent and virtuous, and pleads for them a constitutional provision for their proper representation. And as illustrations of his theory he refers to the tyranny of the democracies of ancient Grecian republics, and to the tendencies of the American republics, as those tendencies asserted in the works of John C. Calhoun, a favorite authority of the author, and of reliability I need not here speak. In other words, in a country where there were classes recognized by law, the fear of Mr. Hare was that if the majority got the power in its hands, it would tyrannize over another class, its inferior in numbers, but not in intelligence and virtue. It is a mistake that in this country, there is no foundation for such a fear, and that is all I said. I made. I admit, sir, and strongly, that in our deliberations we should have no partisan feelings or results. While the majority always will govern, it is not the majority of to-day may be the majority of to-morrow, and in forming or laying down a constitutional principle, it is not the majority, whether in the majority or in the minority, or support a rule or principle for one or another, which he is not willing to do himself.

Mr. FLAGLER — I have no opinion, sir, that in consequence of the State it would be wise to change the arrangement of eight Senators in this body with the hope of obtaining a more equal representation. I look upon the present position of the standing and expected to support you, sir, that the majority had in this body regard to the admission of new States to me to doubt also to concur in the proposition. A great and powerful force for in the present character, increasing the number of States, and the number of States.

leaves the Senate proposes also the Senate man, that pending, at present, proposed to be favorable have a serious for the law.

I think also popular enough to their country; and in my view the State as of Assembly to elect me to make a pertinent to frame a Constitution of years, and as to produce for ourselves as much for the people as scrutiny teaches us it is wiser

the people to have done rather than through desire, although it may not, some, to say, in answer to gentleman from Rensselaer that, in my judgment, we can here we were before the Convention reference to the appointing of some of the executive etc. How is your executive under the present Constitution? no responsibility anywhere. Well, the gentleman's time has

I do not propose to enter into any question which forms the main report under consideration, the ad- vantage from returning to a large dis- trict rather than to continue single districts etc. I had designed that other gen- tleman given the subject more thought capable than myself, should pre- sent of the committee on that question.

I intend to enter minutely into the the foul and unjust charges made by the committee by the gentleman from [Mr. H. Brooks], and the gentleman from [Mr. Conger] who addressed the last evening. Something less than the two months during which we have been here was sufficient to develop the fact there were in this body gentlemen anything could be judged from their ac- tions, were more intent upon finding fault to carp at in the action of the majority upon furthering the legitimate objects of the Convention. Why, sir, gentlemen travel out of the way and actually go begging for grievances. They are disappointed and chagrined if they gather up nothing through the day which they can throw into the face of the majority of the Convention. I did think, when those gentlemen were handling the committee so roughly last night, that perhaps it might be necessary, or proper at least, for some members of that committee to vindicate themselves and their conduct. Yet when I come to reflect how cheaply these charges were made, and how common and how little respect or regard they were entitled to, I made up my mind to pass them by as I do now. What are we charged with, or what grievances

have the gentlemen now found? It is charged that the committee in preparing their report were governed by partisan motives and partisan designs; that we "gerrymandered" the State; that we picked out a county here and a county there, and divided the State into eight republican districts, except the little matter of New York, where, I believe, they concede we have been so fair as to give them a democratic district. Now, I might say with perfect truth, if it were worth while, that I religiously believe that the subject of politics, or the political complexion of those districts, did not enter into the consideration of that committee at all. The two gentlemen on that committee from New York, gentlemen of intelligence and integrity, and who, I understand, belong to the same political party with our accusers, have concurred most heartily in the principle of this report, and in the details of the apportionment, and I believe they will support me in saying that the apportionment had no partisan purpose whatever. But what is the complaint here? Why the first complaint is that whereas the republicans have only a majority equal to two per cent upon the whole vote in the State, yet by this apportionment we get twenty-four republicans to nine democratic Senators, and thus they charge to the committee the consequences of the whole democratic majority being pent up in the city of New York and its environs. We cannot help that; the committee did not know of any way to diffuse and scatter this majority over the State. We did not feel at liberty to put into the same district anything but contiguous territory. If we could have brought down St. Lawrence county, and put it into some of the wards in New York, I have no doubt my friend from Richmond [Mr. Brooks] would have been better satisfied with the result. Then again, we did not proceed right; we adopted an erroneous basis of representation, and the gentleman seemed very indignant that this committee had found out a new basis of representation, that we had dared, in violation of precedent, as was argued, to exclude aliens from the basis of representation. It has already been shown how unjust that charge is. It has already been shown, that that has always been the rule in the State. In 1821, "aliens, paupers, and colored persons not taxed," were excluded, and in 1846, "aliens and colored persons not taxed." There never has been any other rule in this State, and indeed I know of no other wise, just or sensible rule. The gentleman from Rockland [Mr. Conger] says, 400,000 aliens are excluded from representation—400,000 subjects of a foreign power to-day, are not permitted to enter as an active element into our political system, they are not counted in making up the representation. So much this offense amounts to. But I will not pursue this fault-finding further. The committee were not only unanimous in regard to the principle of returning to the large district system, but they were unanimous in regard to the apportionment details, provided the apportionment should be made by the Convention at all. From the inquiries made of different members of this Convention, I supposed we represented the views of a decided majority when we made this change. All I have to say on the main question now is, that it seems to me



of the members going out each year, we secure stability in the legislation and policy of the State, and to a considerable extent we secure a body having large experience. Its members will not be mere local representatives. They will partake to a considerable degree of the character of State representatives; they will not, in my judgment, be as liable to be the selection of cliques. Men of greater experience will be secured in electing by large rather than small districts; at least this will be the tendency. In a district of six or eight counties and of wide territory, each of the rival parties will be likely to select as a candidate a person who has been engaged in public affairs and acquired a reputation for ability and integrity. This will not be so probable when the selection is to be from small districts. I know gentlemen have said, that it is very desirable that a Senator should be elected from a small district, to the end that the electors may be well acquainted with him. If the districts are large, men will be selected as candidates with a view to success who are known over the entire district, rather than persons who, oftentimes, by management have secured mere local favor. Without intending or desiring to institute comparisons, I submit that the experience under the Constitution prior to 1846 and our experience since are in favor of large Senate districts. The Senate under the Constitution of 1821 was a body, I submit to every gentleman, of greater weight in legislation, was composed of men who seemed to look to the interest of the entire State more and to mere locality less, than gentlemen in the Senate of equal integrity and ability since. We secured, under the former Constitution, a stability in our policy and legislation, and a freedom from the influence of temporary excitement, greater than we have had since. I do not desire to point to particular instances, but I appeal to each gentleman's recollection. Another advantage of a large district is that four men are elected from it, and each year the people are called upon to elect one of them, and thus can indicate their views on public questions every year in every district. Nevertheless, there is retained in the body that experience, that knowledge of State affairs and State wants, which are acquired by a term of four years, and which is available to the new members. I, prior to the discussion here, supposed there was little difference of opinion on this question; that there was a universal feeling among the people of the State that the able Convention of 1846 made a mistake when it divided the State into a large number of small senate and assembly districts. I believed that it was the general opinion among the people of the State that the legislation had not been as wise, our State affairs not as well conducted or administered, since 1846 as previously. The system then adopted did not tend to give us in the Senate a body of experienced, independent men, not influenced by local feelings and local prejudices, and not susceptible to every current of public opinion—a body of men who looked to the interest of the entire State, and who were familiar with its affairs, condition and wants, and who were at times a wholesome check upon the more popular branch of the Legislature, which is

liable to be too much moved by temporary excitement and clamor. Under the plan proposed by the committee, we have combined the advantages of large districts and long terms. We constitute the Senate so that its members shall have experience and the body itself stability, and yet it will each year be subjected to the scrutiny of the electors, and be influenced by their voice in the election of one-fourth of the body. I therefore trust that this Convention will adopt the principle of making the Senate, through these large districts, a different body from what it now is, making, as I trust and believe this Convention desires to do, the districts fairly, and thus disarming opposition and uniting all the friends of the plan of large districts in its support. They should be made fairly, in reference to population, and in reference to geographical lines, and also in reference to the effect upon political parties as they exist. I believe that this is the desire of the members of this Convention. I believe there is a desire among those who are in favor of the large district plan, to see that they are so formed that no man, even if he is somewhat jealous in his partisan feelings, can say that they are not fair with reference to all. I trust this will be done, that we shall alter and perfect the report of the committee in this spirit, and thus in the Constitution to be proposed we shall return to the system of a Senate elected from large districts. I am also in favor of electing the members of Assembly by counties, rather than from smaller districts. Thus they were elected prior to 1846. My earnest and eloquent friend from Rensselaer [Mr. M. I. Townsend] seemed somewhat startled at the idea of going back in this age of progress to what our fathers practiced. I am in favor of everything I believe to be progress in the wise and well government of our State, and in the improving of our Constitution. But it is not wise to be alarmed by the mere cry that we are retrograding when we only propose to return to that which worked well, and to abandon only a novelty which experience has demonstrated not to be an improvement. Now, I appeal to every gentleman who remembers the elections before 1846. Take, for instance, a county like Oneida or Onondaga; each of the parties would make nominations, and each would place on its ticket at least one or two strong, experienced men. It was found that a man of mere local reputation, who had not become well and favorably known over the county, would fail to be elected. Hence, each party sought to nominate men of known ability and integrity throughout the county, to the end that they might be successful. How is it now? Is it not true that an active and intriguing politician will caucus himself into a nomination and election in four or five towns, when he would not be able to obtain either if he had to submit himself to a vote of the electors of the entire county? I do not say it has always worked so, because I know that many excellent and able men have been and are elected to the Assembly under the present system, but is it not true that small, scheming men have in small districts managed to get a nomination and election, who could not succeed and would not be thought of

if the elections were by counties. I think elections of members of Assembly are popular enough in the sense of having men known to their constituents when they are by counties; and in my judgment elections by counties will give the State an abler and more independent House of Assembly than we will have while we continue to elect by smaller districts. Now, sir, permit me to make another suggestion which is not very pertinent to this question. We are attempting to frame a Constitution for our State, for a number of years; and we should endeavor to frame it so as to produce the best government for our State, for ourselves and for our children. While I have as much respect as any other gentleman for the people and for bringing things under scrutiny of the people, yet experience teaches us there are some things which it is wiser and for the good of the people to have done through officers appointed rather than through officers elected; and I desire, although it may not be thought popular by some, to say, in answer to the remarks of the gentleman from Rensselaer [Mr. M. I. Townsend] that, in my judgment, we can wisely go back to where we were before the Constitution of 1846 in reference to the appointing rather than the electing of some of the executive officers of this State. How is your executive State government under the present Constitution? No head, no unity, no responsibility anywhere.

Here the gavel fell, the gentleman's time having expired.

Mr. COOKE—I do not propose to enter into any discussion of the question which forms the main feature of the report under consideration, the advantages to spring from returning to a large district system rather than to continue single districts as they now are. I had designed that other gentlemen, who had given the subject more thought and were more capable than myself, should present the views of the committee on that question. Neither do I intend to enter minutely into the facts to repel the foul and unjust charges made against the committee by the gentleman from Richmond [Mr. E. Brooks], and the gentleman from Rockland [Mr. Conger] who addressed the committee last evening. Something less than the term of two months during which we have been in session here was sufficient to develop the fact that there were in this body gentlemen who, if anything could be judged from their acts and speeches, were more intent upon finding something to carp at in the action of the majority than upon furthering the legitimate objects of the Convention. Why, sir, gentlemen travel out of the way and actually go begging for grievances and they are disappointed and chagrined if they can gather up nothing through the day which they can throw into the face of the majority of this Convention. I did think, when those gentlemen were handling the committee so roughly last night, that perhaps it might be necessary, or proper at least, for some members of that committee to vindicate themselves and their conduct; yet when I came to reflect how cheaply these charges were made, and how common and how little respect or regard they were entitled to, I made up my mind to pass them by as I do now. What are we charged with, or what grievances

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to be worthy of grave consideration by this Convention, to what extent this higher branch of the Legislature, this conservative branch, the Senate, ought to represent local constituencies. What is the object, as has been argued by the gentleman from Oneida [Mr. Kernan], of two houses, if they are to be organized alike, representing local constituencies alike? I do not think there is anything in the argument that every individual of the constituency should know personally the man who is to represent them in the Senate. I believe that our constituents demand some change, some improvement, something that will elevate the standard, if possible, of the Legislature. I intended to allude to one argument made use of by the gentleman from Rensselaer [Mr. M. I. Townsend] last evening. He says, under the old system to which we propose to return now, there was a man expelled from the Senate for corruption, and he says triumphantly, there has been no expulsion for such a cause under the present system for the last twenty years. I am not sure, sir, that it is entirely creditable to the Senate that for the last twenty years they have not expelled any member for corruption. I think the argument does not amount to anything until the gentleman shows that no Senator has deserved expulsion under the present system. He thinks if we return to this system politicians will get control of the Senate; they will have control of the nominations. How will it be so then more than it is now? Then delegates will be sent from different counties to the senatorial convention, and these delegates whom gentlemen may call politicians or agents of the "Albany Regency," if the Regency is not already dead—call them what you will, these delegates will be sent by the people to nominate Senators, precisely as is done now. They are just as much politicians who nominate Senators now; the same delegates are sent now as would be if the districts were larger. It is said the Senator will be the creature of the caucus. All the difference is, a small caucus makes the Senator now, whereas under the old system to which we propose to return, the caucus is composed of a larger body of men. I would as soon trust a large caucus as a small one. The committee anticipated the difficulty the Convention would find in agreeing upon an apportionment, and I was therefore disposed to report the principle upon which the apportionment was to be made and then send it to the Legislature to make the apportionment. I anticipated precisely the difficulty we find here. My colleague [Mr. Schoonmaker] stands up and says he is in favor of returning to the large district system, but he cannot go for the present apportionment, it does not place his county right. My friend from Albany [Mr. A. J. Parker] was in favor of the principle, but he prefers rather to remain according to the present arrangement than to adopt this apportionment. And why? Because by this apportionment St. Lawrence swallows up Albany, instead of being swallowed up by Albany. He wants his county in the third district, and nowhere else. The gentleman from Richmond [Mr. E. Brooks] wants to send Westchester out of the second district, and the gentle-

man from Westchester [Mr. Greeley], on behalf of the republicans of that county, wants to come into the third district, and he apprehends no great difficulty in inducing this Convention to accommodate him. I hope he may get into the third district. But what a district the third will be with all this territory and all these men. I did not know of anything so attractive in the third district, that all these gentlemen should choose it in preference to all others. Why is it, sir? It is utterly impossible to satisfy every one on this floor upon an apportionment, particularly in forming large districts. I have drawn up a new apportionment, simply to show that this matter can be done in another way perhaps, and in such a way as to obviate some of the objections made by the gentlemen who have spoken in opposition to the report. I think I do not care much myself about the political aspect of these districts. I think I feel reasonably indifferent upon that subject, because we know that in the mutations of parties, three years may produce an entire change in the result in all these districts. What is now democratic, I hope and expect will be entirely republican three years hence. I really don't know why it should not be so. If this Constitution is adopted, we have taken the negro out of politics entirely and I do not know what possible capital the democratic party will have to trade upon; particularly as John Surratt's trial will have been ended, and he probably hung long before the adjournment of this Convention. But I do not think there is anything to be gained by one party or the other in an apportionment of this kind. I think the party that undertakes any gerrymandering or unfairness in a business of this kind will suffer for it in the end. Now I propose to return to the former number of thirty-two Senators in eight districts—the ratio being 428,000. I find that the counties of New York, Kings and Richmond, contain sufficient population for two districts. These three counties contain just 856,000, and I propose to leave it to some gentleman from New York, who are acquainted with the ward divisions of the city, to divide New York and carve out of it one district, and to set off the balance to the two counties of Kings and Richmond; these will undoubtedly be democratic districts—no man doubts that. Then for the third district I propose Suffolk, Queens, Westchester, Rockland, Putnam, Dutchess, Orange and Ulster, making 410,600; that falls 18,000 short of the ratio. This is undoubtedly a democratic district, and obviates another objection made by the gentleman from Richmond [Mr. E. Brooks] last night. There is a deficiency in this district. It falls below the ratio rather than being in excess of it. For the fourth district I propose Columbia, Rensselaer, Albany, Greene, Schenectady, Saratoga, Washington, Warren and Essex, a very compact district coming within 13,000 of the ratio, being 415,000. For the fifth district, Clinton, Franklin, St. Lawrence, Jefferson, Lewis, Herkimer, Hamilton, Fulton and Oneida, making 384,000. Here is a greater deficiency, but the territory is large and some portion of the district somewhat inaccessible, so I do not feel authorized to insert another county. I do not know that the special



guardians of the democratic party—the two gentlemen who addressed us last evening—have objection to this arrangement on the score of politics. For the sixth district, I propose Sullivan, Delaware, Schoharie, Montgomery, Otsego, Madison, Chenango, Broome, Tioga, Cortland, Tompkins, Chemung and Schuyler, 429,000. The seventh district, Oswego, Onondaga, Cayuga, Wayne, Seneca, Yates, Ontario, Monroe, Livingston. Here is quite an excess, 468,000 — 40,000. excess. The eighth district, Orleans, Niagara, Erie, Genesee, Wyoming, Steuben, Allegany, Cattaraugus and Chautauqua, 462,000. Now, these two districts are somewhat in excess, but the objections made to the apportionment reported are obviated. I only present this to show that the State is susceptible of another apportionment and that it is not necessary for us to give up in despair of ever being able to apportion the State into eight satisfactory senate districts.

Mr. CARPENTER—I dislike very much to detain the Convention at this late hour. I make no issue with the gentleman from Ulster [Mr. Cooke], or with the committee, as to the apportionment which has been presented for the consideration of the Convention, provided the proposed large district system shall prevail, nor shall I say anything in reference to the duration of the senatorial term, because, under the amendment offered by the gentleman from Cortland [Mr. Ballard], the only question now presented for the decision of this body is whether it will provide for the retention of the senatorial districts as now organized by law, or recommend the formation of the enlarged districts as proposed by the committee. To this question I shall briefly address myself. I am not unaware that it may be regarded as an act of indiscretion, if not of temerity, to dissent from the conclusions of the standing committee—a committee the weight of whose names and the power of whose influence would contribute largely to the adoption of any proposition that they might submit, and I dissent only because I have been unable to discover the first substantial reason for the alteration of the present system. The committee seem to have conceived, and based their report upon, the fallacious theory that the extension of the territorial limits of a district will tend necessarily to the enlargement of the mental and moral stature of the representative. Experience and reason alike prove this theory to be unsound and unsustainable by fact. Under the Constitution adopted in 1821, Assemblymen and Senators were elected in the manner now proposed by the committee. A glance at the Civil List for the twenty-five years prior to the Convention of 1846, will exhibit the fact that, during those years, there was as much ability displayed in the Assembly as in the Senate of the State. And if the average ability of the Senate was at all superior, that superiority was attributable mainly to two reasons; first, because the Senate was numerically a smaller body, and second, because the duties devolving upon the Senate were of far greater importance than those devolving upon the Assembly. For a long period the Senate formed a part of the highest court in the State, and Senators were frequently nominated and

elected with reference to their judicial ability. The laws then conferred upon the Executive greater patronage, subject to confirmation, and Senators were called upon to discharge greater and more important duties in that respect than have devolved upon them in more recent times. And even now, if a change were made in the Legislature, so as to limit the powers of the Senate and increase the functions of the Assembly, from that moment the Assembly would become the more important body, and the position of Assemblyman more honorable than that of Senator. The ability of the representative is not proportioned to the size of the district from which he is chosen, but to the importance of the duties devolving upon him. We are led into a natural error in looking back at the Senate as it existed prior to 1846. It is natural to regard Senators, not as they were then engaged in the performance of their duties in the Senate, but to look upon their images which are treasured in our memories—images representing those men with the subsequent growth resulting from an experience of perhaps twenty-five years in the public service added to their statures. Upon the same rule, if we should change the present system and adopt the large district system, delegates to the Convention which may convene twenty years hence would be met at the very threshold, as they have been at this Convention, by some persons who are accustomed to trace effects to accompanying circumstances, and not to their adequate causes, asserting that the large district system had proved a failure, and that the single district system produced abler and better men, simply because many men now occupying a position in the Legislature will doubtless, during those twenty years, have attained a reputation much higher and more honorable than that derived from the position which they occupy at this time. We must not expect at the present time to see as marked instances of statesmanship in individuals, or men towering so far above their associates as they did fifty years ago. There may appear to be fewer giants now, because there are less pigmies. There may appear fewer of that cyclopean race of statesmen with a single eye to the public interest, because the general average of intelligence has increased and the dwarfs are rapidly vanishing. We must remember that we are not here to establish fundamental law for some Utopia, or modern Republic of Plato, but we are about to recommend a fundamental law for adoption by the people of the State of New York, with full knowledge of the corrupting influences in society, and in political organizations. So long as public sentiment shall be divided on great questions of human rights and municipal rights, of financial policy, and public improvements, so long the people will aggregate themselves into masses and form associations for the purpose of concert of action, and thus originate political parties. For the success of these political parties the caucus and the convention are as necessary as the Legislature and the executive chair for the exercise of the power of the State. It is necessary to look at these parties as they are, and with reference to their practices. If you should consolidate four sena-

torial districts as they now exist into one large district as proposed, when nominations come to be made, you will find, as heretofore, that the claims of locality in nine cases out of ten will prevail over the claims of merit. If your Senators are to be taken from a large district, that district in practice will be virtually parcelled into four subdivisions, and every senator will be nominated from a circumscribed locality, and by delegates representing such limited portion of the district as at present; or if this is not done, and the entire district shall participate in the selection, the nominations will be almost invariably dictated by a few prominent State politicians, and perhaps for their own personal ends. I aver, therefore, that we will not insure greater ability or integrity by the adoption of the large district system. In the selection by a regency, overriding as they would the will of the people if they did not accept the recommendation of the delegates from the particular locality from which the nominee was to be chosen, they would probably in frequent instances select not the man in whom the people had confidence; not the man whom, through proximity of residence and opportunities of association, the people had learned to respect for the uprightness of his character, but some played-out party hack that twenty years before had acquired a little notoriety by accidental tenure of office, or by a succession of newspaper puffs. It is that class of men that, under the large district system, would frequently represent the people in the Senate. I believe that we are more likely to insure integrity in the Senate of this State by circumscribing the districts in such a way that a district comprising a population large enough to elect a Senator, shall have the opportunity of presenting the name of a person honest and upright, in preference to one who may be thrust upon it by a few centralizing politicians. The gentleman from Chautauqua [Mr. Barker] and the gentleman from Oneida [Mr. Kernan] have both advanced a peculiar idea in regard to the veto power. Sir, I do not regard the Senate of this State as constituted for the purpose of exercising such prohibitory authority. Its powers and duties are in most cases co-ordinate with those of the Assembly. I admit, and I believe it is proper, that one branch should be a check upon the other, not to contravene the popular will, but to prevent inconsiderate and hasty legislation; but neither branch is constituted for the purpose of exercising the veto power, for that would be an infringement upon the Executive. And if, under the present constitution of the Legislature either branch is pre-eminently the checking power, aside from vague theory, I am unable to ascertain which it is. So long as bills can be introduced into either branch, you may as well term the Assembly as to term the Senate the conservative and revisory body. The creation of the two bodies was for the purpose of preventing hasty legislation. Now, I am unable to see how the Senate is to be a proper body to prevent hasty and inconsiderate legislation; if, as the gentleman from Chautauqua [Mr. Barker] claims, it should be a magnificent body, figuratively on stilts, far above the people, knowing nothing of the wants of localities, or of the demands of the

public. It is as necessary that the Senate should be acquainted with the wishes and demands of localities, as that the Assembly should, otherwise it would be as likely to act against as for the people, and every check might be an act of tyranny and every grant an usurpation; and I am decidedly of opinion that it would be imprudent to theorize the veto power out of the hands of the Governor. The committee seem to have had an idea that there is corruption in the Legislature (a supposition which I am not prepared to dispute) and they are disposed to suppress that corruption in the future by simply altering the boundaries of the legislative districts. I believe, Mr. Chairman, that if we should return to our constituents, and in reply to their inquiries as to what we had done to prevent corruption in the Legislature, we should tell them that we had stretched the boundaries of the districts so as to take the power out of their hands and put it into the hands of a few State politicians, they would laugh at us in derision; but if we should tell them that we had removed the objections which honest men have to occupying seats in the Legislature, by increasing the salary so as to enable them to pay necessary expenses at the capital, and that we had removed the inducements which lead dishonest men to struggle for those seats, that we had prevented the wholesale granting of special charters to corporations, which are frequently log-rolled through by large expenditures of money, that we had prohibited the Legislature from bestowing the funds of the State upon sectarian or other institutions, or appropriating the public money to any institution or public work which the State does not own and control—if we should tell them that we had headed off the tax levy that might come up from New York, with bogus claims attached, involving a moneyed pressure, if we should inform them that we had incorporated provisions that would prevent bribery at the polls and in the Legislature, and even gone so far as to declare it bribery for a member of the Legislature to take pay for any service performed in connection with that body, so that members could not go home and acknowledge that they had accumulated a large sum of money, and claim that they had made it legitimately, for instance, by drafting a bill for some one person, and arguing some legal question or private claim before a committee for another person, and so on through the category, but all for large fees—I think, if we shall be able truthfully to make such a statement to the people, they will say that we have struck at the root of the evil, and have taken the right step toward preventing corruption, and toward securing for them in the future an honest and reliable Legislature. Sir, whenever the territorial boundaries of a district are so extended as to include a population larger than sufficient to elect one Senator, the district is entirely an arbitrary one. There may be some reason for electing Assemblymen by counties, because there are well defined county lines, and because a person who is sufficiently prominent to be a member of Assembly, is through county affiliations and associations about as well known to the intelligent men of the entire county, as to those of his own town or ward. There is a reason for the

establishment of judicial districts, because the entire litigation of the State cannot be attended to by one court, and a division into judicial districts becomes important also for the convenience of clients and attorneys, and for economy in securing the attendance of witnesses. But if there is any principle or reason on which to base these large senatorial districts, it should be desirable to carry that principle to its logical result, and reap the full benefit therefrom, by the election of all the Senators from the State at large. With the origin of our State government, certain ideas were introduced into our Constitution from the monarchical and aristocratic governments of Europe, and a slight modification of the legislative theory of the British Government was here adopted, and it took until 1846 to establish beyond question the correct theory of republicanism, namely, that the representative should be amenable to the people. Our Constitution framers at first tried four senatorial districts, and afterward eight; but not until 1846 did they recognize in its broad extent the principle upon which those districts are now based, that the Senator should be amenable to the electors of his district, and not responsible only to a certain portion of them. If there is any peculiar charm about the number eight, and any possible reason for such a subdivision, then consistency requires that there should be but eight Senators. The gentleman from Jefferson [Mr. Merwin] stated the correct doctrine in the report which he submitted to the Convention in regard to the representation of minorities in the Assembly, in which he argued substantially that the State should be so districted as to give minorities the amplest opportunity for representation. His argument applies with greater force to senatorial districts. Under our government majorities must govern—that is the great republican idea—but it is a matter of equity which we cannot fail to recognize that minorities should have a hearing and an opportunity for the redress of grievances. By the proposed large district system you draw through this State a geographical line, upon one side of which you will virtually enact that only those representing one particular shade of political opinions can be elected to seats in the Senate, and on the other side is the reverse, only those representing a different shade of political opinion can be allowed a voice in that body. We have had one geographical line drawn through the center of the Republic, and the valor of our soldiers in four years of bloody conflict has hardly effaced it. I dislike to see drawn through this State any line which will separate the agricultural and canal interests of one section from the mercantile and manufacturing interests of the other section, because as soon as we admit representatives of one party only from one side of that line, and only representatives of the opposing party from the other side, we will aid from that moment in creating in the people a greater divergence from a common interest, and assist in making each party to a certain extent sectional. As it is under the present senatorial district system, persons representing either of the great political parties can be elected on either side of the line which separates the territory of their respective

majorities. Sir, that is the only way in my judgment in which minorities in this State can be represented in the Senate. By retaining the present districts we contribute to the perpetuation of comparative harmony; by disarranging the present system and establishing the districts as proposed by the committee, I fear we shall foster a discordant feeling that may war against the best interests of the State. I believe we have been sent here by the people to recommend changes in the present Constitution only where changes are absolutely necessary to conserve the public welfare. They have demanded a more thorough recognition of human rights and municipal rights, and a certain reconstruction of our judicial system, and they demand that corruption in high places shall cease; and further than that I have heard of no complaint on the part of the people of this State, and their general apathy argues that they are oppressed by few abuses that need correction. That seems to me sufficient reason for leaving well enough alone. And we incur very great risk of securing any reform, when, by any action on our part or by any refined theory as to the elevation of the body constituting the higher branch of the Legislature, we tend directly to take from the people that power which they are more competent to exercise properly than are a few ambitious men with a large State acquaintance.

Mr. HITCHCOCK—I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Hitchcock, and it was declared carried.

Whereupon the committee rose, and the President *pro tem.* Mr. ALVORD resumed the chair in Convention.

Mr. ARCHER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress thereon, but not having gone through therewith had directed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

On motion of Mr. FULLER, the Convention adjourned.

SATURDAY, August 3, 1867.

The Convention met at ten o'clock A. M., the President *pro tem.* [Mr. ALVORD], in the chair.

Prayer was offered by Rev. A. A. FARR.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. MERWIN presented a petition from W. H. Main and thirty-six others, of the county of Jefferson, praying for a constitutional provision for the protection of fisheries in the international waters of the State.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. FOWLER presented a petition from Jotham Sewall and one hundred and sixty others, citizens of Washington county, against donations to sectarian institutions.



Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. GRAVES presented a petition from J. B. Washburn, and one hundred and twenty others, of Gloversville, Fulton county, asking that the Constitution contain a clause prohibiting the Legislature, municipal corporations, and town and county officers from donating moneys or appropriating any property to any church, school, college, hospital or asylum or other institutions under the control or influence of any religious denominations.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BICKFORD presented two petitions, one from Francis A. Cross, and fourteen others, citizens of Cape Vincent, Jefferson county, and one from E. Woodward Brown and George Gilbert, of Carthage, Jefferson county, on the same subject.

Which took the same reference.

Mr. BELL presented the petition of Remos Wells, supervisor of the town of Lyme, and fifty others, asking that a provision be embodied in the Constitution to preserve the right of fishing in the international waters of this State.

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. WALES—I have here the petition of Henry Sanford, which was presented, I believe, by the gentleman from Westchester [Mr. Greeley] and referred to the Committee on Industrial Interests. I suppose it should follow the report which this morning was referred to the Committee on the Preamble and Bill of Rights.

The PRESIDENT *pro tem.*—It will take that reference as a matter of course.

Mr. REYNOLDS—I desire to ask leave of absence for myself for Monday and Tuesday next.

No objection being made, leave was granted.

Mr. CHESEBRO—I desire to ask leave of absence for Mr. Church until Tuesday morning.

No objection being made, leave was granted.

Mr. VERPLANCK—I ask leave of absence for myself for Monday and Tuesday next.

No objection being made, leave was granted.

Mr. AXTELL—I ask leave of absence for my colleague, Mr. Cheritree, for to-day and Monday next.

Mr. BICKFORD—I had before said that I would object in all cases unless there was some reason given. I like to hear a reason given. Merely asking leave of absence, without stating a reason, I want to be understood as always objecting to.

The PRESIDENT *pro tem.*—The Chair cannot compel gentlemen to give reasons. The gentleman from Jefferson [Mr. Bickford] objecting, the vote of the Convention must be taken.

Mr. KERNAN—Is Mr. Cheritree present?

Mr. AXTELL—Mr. Cheritree desires leave of absence on account of sickness in his family.

The question was then put on granting Mr. Cheritree leave of absence, and it was declared carried.

Mr. KERNAN—I ask leave of absence for my friend Mr. Barto until Tuesday morning, and the question is this: he has staid here very diligently,

but he has been called home by business which could not well be deferred.

No objection being made, leave was granted.

Mr. FOWLER—I ask leave of absence for Mr. Endress until Tuesday next. He informed me last evening that he received a telegraphic dispatch which rendered it necessary for him to take the next train and go home.

Mr. GREELEY—I observe that we are not able to grant leaves of absence. We have scarcely a quorum here. The Chair may consider me as objecting to every leave of absence asked.

The PRESIDENT *pro tem.*—The Chair cannot consider the gentleman as objecting unless he objects on every case as it comes up.

The question was then put upon granting Mr. Endress leave of absence, and it was declared carried.

Mr. MATTICE—I ask leave of absence for my colleague Mr. More, who is necessarily called home on important business, until Tuesday next.

Mr. GREELEY—I object. It is disrespectful to this Convention. Gentlemen go away, and then send a colleague here to ask leave of absence, when they have taken it already. We need not spend our time giving them leave when they have taken it.

Mr. MATTICE—I will state, in behalf of Mr. More, that he has been here constantly since our 4th of July adjournment, and perhaps there is no gentleman who has been here more constantly during the session than Mr. More, but it is important, occasionally, that men should return home for the purpose of transacting their necessary business, and I see no reason why this leave of absence should not be granted to my colleague, under the circumstances.

The question was then put on granting Mr. More leave of absence, and it was declared carried.

Mr. BICKFORD—Sometime ago an indefinite leave of absence was granted to Mr. James Brooks. The reason assigned was that he was under the necessity of attending a session of Congress. The session of Congress has terminated. I move that that indefinite leave of absence be withdrawn and that he be required to attend.

The PRESIDENT *pro tem.*—The Chair will suggest that, under the rules, that motion for the present must remain on the table, because it is a reconsideration of a leave of absence.

Mr. RATHBUN—I was about to propose to debate that question.

The PRESIDENT *pro tem.*—It goes over under the rule, because it is a motion to reconsider.

Mr. McDONALD—I ask leave of absence for Mr. Prindle. I will say, in his behalf, that he has not been absent during the session, but was compelled to go home on account of important business which he could no longer neglect, and will be back here on Tuesday next. I think, on account of his former good conduct, he ought at least be excused for one day.

Mr. GREELEY—I object.

The question was then put on granting Mr. Prindle leave of absence, and it was declared carried.

Mr. MERRILL—To bring this to an end I move that all gentlemen absent without leave shall be given leave until Monday evening.

Mr. GREELEY—I move a call of the roll first.

The question was then put on the motion of Mr. Greeley, and it was declared lost.

Mr. VERPLANCK—I hope the gentleman from Wyoming [Mr. Merrill] will withdraw his motion. It seems to me it is hardly dignified in this body to pass a resolution of that description. Gentlemen do not desire and have not asked to be excused, and it is hardly worth while for this Convention to pass upon it in this way.

Mr. MERRILL—My idea was to save time by granting leave to those who have taken it without asking, in a lump, instead of going through the names of the fifty, or sixty, or perhaps ninety absentees.

Mr. LAPHAM—The motion of the gentleman from Wyoming [Mr. Merrill] is open to this objection. I trust it will not receive the sanction of the Convention. We have now adopted a rule for adjournment, which is, that one week, which includes to-day, we shall sit until Saturday at noon and adjourn until Monday morning, and that each alternate week we shall adjourn on Friday until Monday evening. This rule of business, on motion of the gentleman from Oneida [Mr. T. W. Dwight], was adopted expressly with the view of accommodating gentlemen and enabling them to go to their respective homes and spend each alternate Saturday. There is, therefore, no excuse for any member absenting himself without the permission of the Convention.

Mr. MERRILL—I withdraw my motion.

Mr. COOKE—I ask leave of absence for Mr. E. Brooks, who was called away suddenly yesterday on account of some urgent matter at his home.

Mr. GOULD—I was going to ask the Secretary to announce the number of gentlemen who are now absent on leave.

The PRESIDENT *pro tem.*—About thirty, the Secretary informs the Chair.

Mr. GREELEY—I object.

The question was then put on granting Mr. E. Brooks leave of absence, and it was declared carried.

Mr. HARDENBURGH—I call the attention of the President to the fact that there is no quorum present.

The PRESIDENT *pro tem.*—The Chair has not so found the fact to be. The Chair will inform the gentleman that the motion was evidently carried, and therefore there was no count of the negative. In addition, he would inform the gentleman that the Secretary has counted the number present, and there are more than eighty-one present.

Mr. VAN CAMPEN presented the petition of Hollis Scott, of Hinsdale, and nineteen others, against the appropriation of the public monies to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. VAN COTT presented the petition of P. W. Kenyon and twelve others upon the same subject.

Which took a like reference.

Mr. MASTEN—I desire to present a communication from Francis E. Cornwell, an attorney and counselor-at-law, of Buffalo, in relation to law libraries. I hardly know what reference is proper to make of the communication,—I think, probably, the Judiciary Committee, for the reason that it proposes to tax law suits for the purpose of raising a fund to establish law libraries.

The petition was referred to the Judiciary Committee.

Mr. VERPLANCK—I call for a consideration of the resolution offered by me a few days since in reference to canals.

The SECRETARY proceeded to read the resolution, as follows:

"Resolved, That the Canal Commissioners report to this Convention the number of breaks in the Erie canal, within the last ten years, the amount paid to contractors, or amount of the same under their contracts, and the length of time that each break interfered with the navigation of the said canal."

Mr. VERPLANCK—Some time since I introduced a similar resolution, addressed to the Canal Auditor. On the 17th of July he made a report to this Convention, in which he states that the number of breaks had not been reported to the Canal Commissioner by the superintendent of repairs, and he cannot tell anything about the expenditure for the breaks, but can only give us information as to the amount they cost per year over and above the amount paid to contractors under their several contracts. The Convention will see, when we come to ascertain the capacity of the canal, it will be very important to understand and know how much the canal navigation is impeded by breaks, and therefore it is very necessary for the Convention to have this information. I will call the attention of the Convention to another fact. The Auditor has paid for repairs of breaks, over and above the amount each contractor has received under his contract for repairs, within the last ten years over \$500,000. In the year 1864 he paid \$11,405.77. In 1865 he paid \$150,952.10. In 1866 he paid \$166,168. Therefore it will be observed in 1864 the amount was only the sum of \$11,000, and in 1866 it amounted to the enormous sum of \$166,000. I desire to call the attention of the Convention to this fact, to show how these expenses have increased, and also to show the state of the facts about the canals.

The question was put on the resolution of Mr. Verplanck, and it was declared adopted.

Mr. T. W. DWIGHT—I offer the following resolution:

"Resolved, That the vote on the amendments now under consideration in the Committee of the Whole, shall be taken on Tuesday next at half-past one o'clock P. M."

The PRESIDENT *pro tem.* announced the question to be upon the adoption of the resolution of Mr. T. W. Dwight.

Mr. VERPLANCK—I wish the gentleman would say Wednesday. Very many of the members of the Convention have leave of absence until Wednesday morning, and it is desirable to have a full house.

The PRESIDENT *pro tem.*—The resolution

giving rise to debate, it will lie over under the rule.

Mr. MERRITT—I hope I may be permitted to say that we desire, at least on Tuesday, that the question of large or small districts shall be decided when we go into Committee of the Whole. I shall ask that, when we go into the Committee of the Whole, should no person desire to speak to that particular point. I ask that we pass by that informally and take up other portions of the report to-day.

Mr. MERWIN—I offer the following resolution:

*Resolved*, That it be referred to the Committee on Cities, etc., to consider the propriety of authorizing the Legislature to adopt the system of cumulative voting in the election of aldermen in cities."

Which was referred to the Committee on Cities.

Mr. McDONALD—I offer the following resolution—

The PRESIDENT *pro tem.*—The Chair will inform the gentleman that it is out of order.

Mr. McDONALD—I give notice that I will call up, on Tuesday next, the following proposition:

*Rule*—The Convention will, unless it shall then otherwise order, go each day into Committee of the Whole, on any general or special order pending, one hour after it convenes, unless before that time that order of business may have been reached.

Mr. SHERMAN—I give notice that I shall move the following amendment to the resolution of the gentleman from Ontario [Mr. McDonald]:

*Rule*—It shall be in order at the expiration of one hour after the reading of the Journal, to move that the Convention go into Committee of the Whole on the business committed to it; provided the appropriate order of business be not sooner reached.

Which was ordered to lie on the table under the rule.

The Convention then resolved itself into the Committee of the Whole, on the report of the Committee on the Legislature, its Organization, etc., Mr. ARCHER, of Wayne, in the chair.

Mr. FULLER—I desire to submit a few considerations to the committee upon the pending question. I desire to say in advance, that I have the highest respect for the Committee upon the Organization of the Legislature, for the members of that committee and their opinions individually and collectively, and I regret exceedingly that I am compelled to differ from their report. I am opposed, sir, to this change from the single to the larger districts. It is a very great and sweeping change, and it should not be adopted unless the reasons for it are very strong and conclusive. It should not be made upon any doubtful grounds. What are the principal reasons that are urged in its favor? Why they say that the Senate under the

that is claimed. If my memory serves me now, sir, there were a great many members of the Senate under our former system of very ordinary capacity, although they were elected from the large districts. And if my memory serves me, sir, it is not true that the Senate, under the former system, was so perfectly pure and immaculate as some gentlemen seem to suppose it was. I recollect very well when the Legislature, in both its branches, used to come up here year after year, grant bank charters, and appoint commissioners to apportion the stock among the members of the Legislature and poor politicians outside, many of them not worth a dollar, in order that they might sell it at a premium to the capitalists of the State, and thus reap the reward for their services. I am not going to dispute that the Senate, under the former system, did contain, as a general rule, more ability than under the present system; but I deny the proposition put forth by the committee that it was due to the fact that they were elected from the larger districts instead of from the single districts. No, sir, it was due to other causes. In the first place, it was due to the fact that the Senate was the highest court in the State, to be a Senator then was to occupy a high judicial position, and the place was sought for on that account. Eminent lawyers in the State sought a place in the Senate in order that they might distinguish themselves in that high judicial position, and did distinguish themselves in that office as eminent judges, and they have left the records of their eminence in the reports of the judicial decisions of the State. It was this which gave the principal dignity to the Senate under the former system; and unless you confer the same power on the Senate, you cannot restore it to that dignity under any system that you can adopt. Then again, the longer term of office gave them an advantage over the Senate under the present system. Experience is valuable in legislation as well as in anything else. I had the honor to be a member of the first Senate which was convened under the present Constitution, and I recollect very well that a good many bills passed the ordeal, and got through at the first session of that Senate which, by no means, could have got through at the second session after the experience of a year, especially bills for the payment of claims against the State. A good many of that class were passed which would not have been entertained at all at the second session of the Senate. The third house was too sharp for us—if I may be allowed the expression—in our greenness, when we first came together. I say experience is valuable in legislation as well as everywhere else, and that an experience of three or four years in the business of a Senator adds to the qualifications for that office. A knowledge of the business is acquired during that time, and of the history of the legislation of the State. Men become as it were experts by this experience, and it is wrong to suppose that men can become legislators without experience all at once, any more than they can become so qualified for any other branch of business. What was it, sir, that gave to the South its preponderance in the national legislature before the war? It was the fact that they kept their men in their places until they became



educated, until they understood all the details of legislative duty, until they became skillful and expert in that kind of business, while we in the North were in the habit of often changing our men, of sending green and new men there, who were for that reason no match for those who came from the other quarter. The same is true of the Senate of this State. If you want to give to it a conservative character, and give to it more eminence and knowledge of legislation, you must give your Senators a longer term of office, and in that way you will accomplish it, so far as it can be done. It will add nothing to its ability or to the dignity of the Senate if you increase the size of the districts. That is not the difficulty now, it is not that our Senators come from small districts. The difficulty is to get men of proper qualifications and sufficient ability and experience to accept the office. The truth is, that men of eminence in the professions, or eminent in other pursuits of life, cannot ordinarily be induced to take a nomination to the Senate of this State. They can reap richer rewards and greater distinction in other fields of labor. You will not overcome this difficulty by enlarging your districts. I know not how it is in other districts, but in my own the office of Senator for several years past has frequently gone a begging among that class of men who are best qualified to fill it. They cannot ordinarily be induced to accept a nomination for it, and you will hold out no greater inducement to them by enlarging the districts. They will not accept the nomination any sooner from a large district than they will from a small one, and the only way you can overcome this difficulty is by adding to the dignity and eminence of the office. We cannot substantially increase the power of the Senate, and I do not understand that there is any proposition before this Convention to do so. We cannot make it, as it was before, the highest court of the State; we cannot make a seat in it a high judicial position and desirable on that account. The only additional dignity we can give to it is by giving more permanence to the office and an increase of the term, and a larger experience, and thus a better qualification for the discharge of its duties on the part of members. If we do this, we will secure all we can gain by a resort to the large district system. There is great difficulty in dividing the State into large districts. I have no doubt the committee have discharged their duty in all faithfulness, with integrity and to the best of their ability; but the difficulty lies here: that when you come to divide the State into large districts, you must necessarily sink local majorities in the smaller districts in the larger majorities the other way, in the large districts. Take the city of Albany for instance. It has now a representative. The democratic party are in the minority in this State, but they have a representative from the county of Albany in the Senate, to represent that minority; but if you put that county in the larger districts, as is proposed to be done, you sink that majority, and wipe it out, and the minority ceases to be represented here; and this difficulty will always meet you in the attempt to divide the State into larger districts. Take the county of Erie, that is a democratic county and

may ordinarily be expected to give a democratic member to the Senate, but if you merge it in the eighth judicial district, the local majority there will be overborne and wiped out by the larger majority on the other side in the district, and thus they will lose the benefit of representation in the Senate, and the minority in that part of the State will lose the benefit of that representation. I do not believe it will be possible to so district the State as to avoid this. You will have to wipe out these local majorities on the one side or the other, and it will be impossible to make any distribution of districts which will be satisfactory. This is a strong objection to this system, and one which it is impossible to overcome. I can illustrate it again in my own county. There we have a republican majority of some twelve or fifteen hundred ordinarily, but it is distributed unequally over the county, and frequently we send one democratic representative from that county. The minority therefore is represented. Well, now, if you adopt the system of representation by counties, the minority will cease to be represented there; and I think that one principal reason why the Convention of 1848 laid aside the large district system, and resorted to the small district system was, that they might give the local majorities an opportunity correctly to represent the minority in the Senate. My time is limited, Mr. Chairman, and having called attention to this point, I will not dwell upon it any longer. I am in favor of the principle of the proposition of the gentleman from Niagara [Mr. Flagler]. I think that we should provide for giving a larger representation to the city of New York, and perhaps for that purpose it would be better to adopt the number of thirty-six than thirty-two. I think we should not trouble ourselves with districting the State for the purpose of representation. I think that duty belongs appropriately to the Legislature. I think we should not spend our time here in descending to these details, but that we should leave it to the next Legislature to district the State, after having provided the number of districts into which it should be divided, and I think they will do it better than we can. I think it should be divided into single districts for the reasons I have assigned, and I think we shall gain nothing by dividing it into the larger districts. I think we shall gain nothing in the integrity or in the capacity or character of your Senators. I think you will gain what you desire, or at any rate all that you can gain in that direction, by increasing the term of office of the Senators, and by providing that one-third or one-fourth of the number shall go out of office, and a corresponding number be elected to fill their places every year. In this way you will make it a conservative body; in this way you will make it what you desire to have it, a check upon the hasty and inconsiderate legislation of the other House. The proposition of the gentleman from Cortland [Mr. Ballard] does not in all respects meet my approbation. So far as it is a test of the single district system as against the large district system I am in favor of it; and when the time shall come to vote on it, I hope the gentleman will consent to a division of his proposition, and let us take the question upon the first portion of it first.

Mr. LEE—I have hitherto contented myself to remain in my seat and to refrain from participating in the debates that have occurred in this body on the various propositions that have been submitted to it, satisfying myself to express my views upon these various propositions by the votes which I have given. But, sir, in view of the report of the majority of the Committee upon the Organization of the Legislature, for whom, I may here say, I cherish feelings of respect, both toward the committee as a body and toward it individually; yet in relation at least to one branch of the report I very decidedly disagree. Now, Mr. Chairman, it may be well to stop for a moment and consider the object for which we are assembled here. It is not, as I understand it, to make a new Constitution, but to revise and amend our present Constitution in those particulars in which it has been found to be unsatisfactory to the great body of the people, and unequal to perform its functions as desired. Now, sir, with respect to a change of the senatorial districts, so far as I know there has been no complaint coming up from the body of the people. The press has been substantially silent. We have no petitions on file asking this Convention to change the senatorial district system, and I may state here, what every member of this Convention knows, that if the change contemplated and proposed by the committee should be adopted, we only return to the exploded system that prevailed from 1821 to 1846, concerning which there was very grave complaint, so much so that the Convention of 1846, entered upon the revision of the Constitution in that respect, and submitted the system that now prevails, concerning which there has been no complaint, with which the people seem to be satisfied, and I hold, sir, it is better in all such matters to let well enough alone, and to address ourselves to the remedying of those defects in the Constitution that have been found to exist. One of the requisitions of the people is that manhood suffrage should be recognized by the organic law of the State. The Convention, in obedience to public sentiment in that regard, has taken action. There have been numerous and grave complaints made touching the judiciary system. Now let us, when it comes in order, go to work to remove the obstacles which clog and embarrass the operations of the judicial machinery. There are complaints touching the management of the canals of our State. When that question comes up in order, let us address ourselves to remedying those difficulties. Complaints, too, have been made in relation to the management of our State penitentiaries. When that comes up let us take hold, grapple with that question, and all other questions that need to be rectified; but as touching this question of senatorial districts, I regard it as one concerning which we may assume that the people of the State are satisfied, both parties, and better satisfied than they will be after we may have spent three weeks (the length of time we spent on the suffrage question) in attempting to change it. Now, sir, from what has been already said, it may be inferred that I am in favor of the present system as it now exists, and substantially as embraced in the proposition of the gentleman from Cortland

[Mr. Ballard], and also by the amendment proposed to be offered by the gentleman from Niagara [Mr. Flagler]. I would agree with the committee so far as relates to the length of the term of office for Senators. I think that experience goes to show that the benefit to be derived from a prolonged period of service, in a legislative capacity, eminently fits the individual for a better performance of his duty, and to that extent I concur in the report of the majority of the committee. I believe, sir, that we should establish the principle upon which the State should be divided, either determining that it shall be divided by large or by small districts, and then hand the subject over to the incoming Legislature to make an apportionment. We shall not have the time, if we have the ability, requisite to make such a division as will prove satisfactory, and enable us to remedy the real difficulties that should be rectified. As to whether large districts or small districts furnish better members is not material, nor has it been shown. It has been assumed but has not been proved, nor can it be proved. It may have happened that the senatorial body from 1821 to 1846 possessed a larger measure of talent and integrity than the senatorial body from 1846 to 1867, but it proved nothing if it be true, no more than would be proven if it should be true that the senatorial body from 1846 to 1867 possessed superior talent and superior integrity. But, sir, I am in favor of single districts, for the reason that throughout the State, there are varied interests that may be said to be local, that pertain to certain localities that can be more surely, the more faithfully and better, represented in the Senate by gentlemen representing separate districts than if representing by large districts. Now, sir, the county of Oswego, which I in part represent, located on the north-western frontier of the State, sets in on the border of Lake Ontario like a pocket, isolated, embracing the Oswego river and harbor. It really possesses no intimate relations with any other district in point of interest; so that if the system of large districts prevail, a gentleman located in Montgomery county or in Herkimer county, or in Lewis county, has no more interest in common with the interests of Oswego county than a gentleman who should be elected from Chautauqua county or Suffolk county. I hold that in settling this question we should endeavor to bring the representation in the Legislature to truly represent, so far as possible, the various interests of the State. It follows, necessarily, that a man selected from the city of Oswego, identified in interest, familiar, growing out of a life-long acquaintance with the business interests of the city, and the commerce of the port, should be better qualified and feel more interest in faithfully looking after the interests of that locality, not in conflict or in variance with other interests of the State, but in harmony with them; he could discharge his duty more effectively, and hence to that extent he is a better representative than one selected from remote portions of the State, from localities having no identity of interest. And again, sir, I hold that the people and their representatives in a legislative capacity should be held as close together as possible. Representatives must, in the very nature of the case, be acquainted

with the wants and the necessities of the localities that they represent, in order properly to discharge their duty. And who is better qualified, who is better prepared, to determine and select than those whose interests are involved? If gentlemen selected thus from the small districts, who are known to the people, fail to meet the reasonable expectations of their constituents, they are dropped and new men are put in their places, and they have no just cause to complain against any one but themselves. But if, on the other hand, they make, as I doubt not they ordinarily would, wise and judicious selections, they can return them as long and as often as they please. I think, sir, that this Convention will act wisely if, when it shall have settled the principle upon which this State shall be districted, it shall hand that work over to be done by the succeeding Legislature. I will only add, sir, that I am entirely satisfied, and I believe the people in my district will be satisfied, without making any increase in the number of Senators. I do not think they would seriously object if it was deemed necessary to enlarge the number moderately, but still I think they would be satisfied with the present number. But I think, sir, that they would decidedly prefer the single district system for many reasons, among which would be found some that I have stated, and which I shall suggest, when it is in order, if it should become in order, as an amendment either to the proposition of the gentleman from Cortland [Mr. Ballard] or to the proposition contemplated to be offered by the gentleman from Niagara [Mr. Flagler] touching the manner of the outgoing members, assuming that the single district system shall be adopted, assuming that there shall be thirty-two Senators, numbering from one to thirty-two inclusive, and that at the end of the first year those outgoing should represent the second, fourth, eighth, twelfth, sixteenth, twentieth, twenty-fourth and twenty-eighth. The second year the third, seventh, eleventh, fifteenth, nineteenth, twenty-third, twenty-seventh, and thirty-first. The third year the sixth, tenth, fourteenth, eighteenth, twenty-second, twenty-sixth, and thirtieth. The fourth year the fifth, ninth, thirteenth, seventeenth, twenty-first, twenty-fifth, and twenty-ninth. The reason for these changes from the number indicated by the gentleman from Niagara [Mr. Flagler] will be apparent to every member. It is so that there will be a relative number outgoing and incoming all over the State each year instead of being confined to only one-fourth part of the State.

Mr. MERRITT — As the committee is not very full, and there does not seem to be a very great desire to discuss the question at large, I move that we pass over the first section and proceed to consider the second section.

Mr. BELL — I object. Let the discussion go on. It is not quite fair, after the gentleman has spoken two or three times on the subject, to cut off debate from those who may wish to speak on this particular question.

Mr. MERRITT — If any gentleman desires to speak I withdraw my motion.

Mr. BELL — I wish to submit a few remarks on this subject of the election and tenure of office of the Senate. I have not, thus far, intruded my

opinions on the Convention, but have contented myself to be governed by the remarks of others, and to take their arguments, when they have suited me, as if made by myself, and unless some point has not been discussed, which I deem important, I should have contented myself with sitting still and merely giving my vote; but there are some points in this question that have not been presented, and which occur to me as important to be presented to this committee, although the question has been ably argued, and nearly every view that was possible has been taken of it. I have been very much pleased with the good temper and candor with which it has been discussed. I think from the remarks made by the various gentlemen who have spoken on this subject that there is a sincere desire on the part of this committee to arrive at the best mode of choosing the Legislature of this State. I do not attribute to any who have spoken any partisan purposes. I think it is the last question out of which gentlemen should propose to make party capital. The districting of a State is a very difficult question; and I am of the opinion, Mr. Chairman, the duty of defining the boundaries of the several senatorial and assembly districts, and of apportioning the number of members to each district, should not be performed by this Convention. This matter may be wisely left to the Legislature. That body is as fully competent to do that work as this Convention. Then, again, this duty of districting the State does not necessarily devolve on this Convention. However wisely we might constitute these districts they will of necessity be altered in seven or ten years at most, we cannot by any division make districts that will be permanent during the continuance of the Constitution. Therefore it should be left to the Legislature to make the first apportionment of Senators and Assemblymen under this Constitution, as we must of necessity provide, in this article, that that body shall make a like apportionment after the census of 1875 shall have been taken. Leave the subject to the Legislature, and we will have relieved the Convention of one of the most difficult questions that will come before us. Now, sir, if we look for a few minutes at the duties of the Legislature of the State, we may come to some just conclusion in regard to how it should be composed. In providing for the law-making of the State, this Convention, in my opinion, should consider well the powers and duties and functions of that branch of the State government. Under all civilized governments the legislative body is divided into two separate and distinct branches, each possessing separate and distinct powers, modes of election, tenure of office, and rules for conducting their deliberations. Without going into an examination of the composition of the British Parliament or other monarchical governments, showing the great difference which exists in the composition of the House of Lords and the House of Commons, or of consuming the time of this Convention by a reference to the ancient republics of Greece and Rome, I will call your attention to the legislative branch of our own national government. There we will find a model which will be safe for us to follow so far as the same may be applicable to the case. It will be seen



that each State is entitled to two Senators to be chosen by the respective Legislatures thereof for a term of six years, while the members of the House of Representatives are apportioned among the several States according to population, and elected by the people for a term of two years. I will read from the Constitution of the United States:

#### ARTICLE I.

SEC. 1. All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

§ 2. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature. No person shall be a representative who shall not have attained to the age of twenty-five years, and been seven years a citizen of the United States.

The fifth subdivision provides that the House of Representatives shall choose their own speaker and other officers, and shall have the sole power of impeachment. So we see the House of Representatives of the United States is the popular branch of the government. And now, sir, in regard to the composition of the United States Senate, and the tenure of office, and qualifications of the Senators—Section three of the same article provides as follows:

"The Senate of the United States shall be composed of two Senators from each State chosen by the Legislature thereof, for six years, and each Senator shall have one vote. Immediately after they shall be assembled in consequence of the first election, they shall be divided as equally as may be into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at expiration of the fourth year"—and so on through the section, showing precisely the length of the term of every representative in office. The third subdivision provides:

"No person shall be a Senator who shall not have attained the age of thirty-five years."

From which it will be seen that it not only requires a different mode of election, but it requires that they shall have attained a different age for members—Representatives twenty-five years and Senators thirty-five years. "The Vice-President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided." Entirely different in this regard from the House of Representatives. They choose a presiding officer from their own number. The Senate is presided over by the Vice-President of the United States. The Senate shall choose their other officers, and also a president *pro tempore*, in the absence of the Vice-President, or when he shall exercise the office of President of the United States." So we see that the president *pro tem.* can in certain events become President of the United States. From these quotations it is plain that the two houses of Congress represent distinct, and in many important respects, different and independent constituencies. The members of the Lower House being elected from small districts by

the people, emphatically represent the people. By its composition it is designed to be the popular branch of our government. While on the other hand, from the mode of election, qualifications, and tenure of office, it is equally evident that the Senate is designed to be the conservative branch, and represent the States in their sovereign capacity without regard to the number of their inhabitants, wealth or territorial extension. It will also be observed that each State, however small, is entitled to two Senators in the Senate of the United States, and no State, however large, in territory, wealth or population, shall have more than two Senators. Now, if we approve of this distribution of power and responsibility in the legislative branch of our national government and conclude that there is wisdom in this provision of the Constitution which our fathers ordained and established we will follow their example so far as possible. The analogy will require us to provide for a Senate that shall represent a different constituency from that of the Assembly. We should not provide for establishing Senate districts that shall represent precisely the same population, no more than they shall represent precisely the same territory or wealth as the gentleman from Rockland [Mr Conger] claimed they should. The Legislature of this State should be so constituted, that the Senate shall, in an important sense, represent the entire State. When you have accomplished this object you have accomplished what is designed in our form of government. Now, let me inquire will the single Senate district system proposed by the amendment of my friend from Cortland answer this purpose? It simply represents one or at most two or three counties. In my opinion it will not. Small districts tend to localize the views and actions of Senators. Let a gentleman be elected to the Senate from Oswego county, as my friend, Mr. Lee, has supposed. He will feel it incumbent upon him to represent the peculiar local interests of Oswego. In some respects he might neglect the interests of other portions of the State. Now, I do not say this from theory, I state it from experience, that where the district is small, members usually conclude that their especial duties are to represent that small constituency. Large districts will, in this regard, tend to enlarge the views of the Senators. This Convention should provide for a Senate, to be composed of members who, from the nature of their constituency, will be required to take broad and extended views of the entire State; to look upon the different measures brought before that body as measures not confined to their immediate constituency, but how will they affect the entire State. How many instances of this kind have I seen in the Senate of this State, and heard Senators say in regard to measures that are really intended for the entire State, "This measure affects my constituency unfavorably, therefore I cannot go it." The practical result of the small district system has a direct tendency to narrow down the views and scope of action of your Senators to the bounds of the territory they represent.

Mr. LEE—I would inquire whether the gentle-

man would not enlarge the scope of usefulness of the members of the Senate if they should be elected all over the State.

Mr. BELL—I do not think that would be a very bad provision. I am of the opinion in many respects that plan would possess advantages over the other system. Fortunately we are not confined to either extreme. But I would ask the gentleman if he would elect Senators of the United States as the President and Vice-President is now elected? I only argue that large districts have the tendency to enlarge the views of gentlemen and enable Senators to take a broader and more extensive view of the interests of the entire State. Again, in regard to the term of office. I believe, so far as I can gather from the argument thus far presented, that the majority of this committee, at least, is in favor of extending the term of office. This I think a very important end to be gained. But the amendment of the gentleman from Cortland [Mr. Ballard] not only limits the senatorial districts to small ones, but does not, if I understood the amendment as read, provide for extending the term of office.

Mr. BALLARD—I refrain in my amendment from saying anything in regard to the tenure of office. My amendment was directed to districts, and to the territories. That was all.

Mr. BELL—This limited term of office, Mr. Chairman, is one of the greatest objections, in my mind, that can be presented to the amendment of the gentleman from Cortland. The term of office should be extended, and I would prefer four years or even a longer term, that we might get a uniform, steady, conservative Senate—a Senate that would understand the true policy of the State, and pursue it uniformly and continuously. Why, sir, the single district system with short terms has operated very injuriously in many regards to the interests of this State. I will mention one particular in which short terms and new Senates operate injuriously—in the matter of claims against the State. A complete system of swindling has been going on in this business. Suppose that one Senate rejects those bogus claims. The parties need only wait two years before they can present them to an entirely new Senate, or nearly new. Claim agents have reduced this to a system. Without doubt they will oppose a continuous Senate wherein three-fourths of the members hold over. Claims are frequently revived and brought up in some other shape, by an assignment perhaps, brought before a new Senate, and in many instances have been allowed. I know of numerous instances of this kind where if such claims had been passed the State would have been swindled out of hundreds of thousands of dollars. Claims of that kind have been presented to the Senate for the second and third time. If gentlemen will take the pains to examine the Civil List they will ascertain that within the past twenty years very few Senators have ever been returned. I think that those who have served two continuous terms have been only about twenty-six—only about twenty-six Senators re-elected for twenty years under the short term system. For the twenty years those who served two terms, not consecutive terms number three or four; those who have served three conse-

cutive terms I think have been but three; putting all those together who served more than one term we have about thirty-two. Only thirty-two Senators out of the entire number have served more than one term during the last twenty years. This examination shows that good men have not uniformly been returned, and I assume we have had as good men under this Constitution as we had under the others. I have no charge to make in regard to corrupt practices; I do not personally know that any exist. I have frequently *heard* of the venality of public men, of canal frauds, of legislative corruption. There are times when the atmosphere of Albany is filled with such reports. The gentleman from New York [Mr. Opdyke] may show some irregularity in regard to members of the Legislature; but I cannot put my finger on any one and say, that man has been paid for his vote. I take it for granted we can get as good men under one system as under the other. It is a matter of expediency as to which system will result in the best and highest good to the State. This, I take it, is the object each one of us has in view. There is probably no position in the State where experience is more invaluable to a proper discharge of duties than that of Senator. When a man who is unaccustomed to the rules and usages of the Senate, however well he may be informed on other subjects, however eminent he may be as a lawyer, or in any other profession, comes into the Senate for the first session his talent and his influence are nearly worthless, he cannot make himself useful; he cannot discharge the duties of a Senator to his own satisfaction, or for the benefit of his constituents. When the committees are made up, the list is looked over, and he being a new member is put at the tail end of some unimportant committee. He has no opportunity to benefit the State nor distinguish himself. But when he shall have had the experience of one or two years he is then prepared to enter upon the duties of subsequent sessions to his own satisfaction, and to the protection of the interests of the State.

Here the gavel fell and the gentleman resumed his seat.

Mr. W. C. BROWN—I am loth to occupy the time of the Convention after so much discussion has been had on this subject, and should not do so were it not that there are one or two thoughts connected with the subject which will influence to some extent my vote, which I have not yet heard mentioned on this floor. I think, Mr. Chairman, that we are not deducing the most wise conclusions from the experience of the past, and I wish to call the attention of the committee for a few moments to the consideration of that thought. From the year 1778 to the year 1822 the State of New York was divided into four senatorial districts. That arrangement proved entirely unsatisfactory to the people of the State, and unwise in the opinion of the Legislature. Accordingly, the Constitutional Convention of 1821 increased the number of senatorial districts to eight. That also proved, in the judgment of the people, and in the judgment of the statesmen of the State, to be an unwise measure. It did not work well; it gave rise, as some gentlemen have said on this floor, to

the Albany regency, and the Senators were too far removed from their constituents. A reform was demanded; and the Constitutional Convention of 1846 assembled under a great pressure to have the number of senatorial districts increased. Under that pressure they went to the other extreme, and increased the senatorial districts from eight to thirty-two. And now we are told, and I believe it is true, that the people are dissatisfied with that, and think that the districts are too small and too many. Let me call the attention of the committee to the point that we should profit by this experience, and not go back and renew the fault that was committed by the Convention of 1821, any more than to the evil which existed in the Constitution prior to 1821, which was then found so wrong. I think this experience admonishes us to take a medium course between what was provided for by the Constitution of 1821, and what was provided for by the Constitution of 1846, which would lead me to the conclusion that I should not favor the report of the committee on this subject, neither could I adopt the plan which is now under discussion. The plan of the gentleman from Westchester [Mr. Greeley] would come nearer to what I think experience would teach us to adopt, than either of the others. It is, however, in my judgment, liable to some objections, but which could be easily corrected. I think the plan of repeated voting is subject to two objections. In the first place, it will not readily be understood by the people; in the second place if I rightly understand it, it may produce this effect, that in a district where one party has a good working majority, the minority may possibly elect two Senators and the majority only one. I have not ciphered it out very closely, but it seems to me that result might occur by the majority having for one of their candidates a very popular man for whom many of his party would repeat their vote to an unnecessary extent and so waste their votes. The minority, by concentrating their votes upon two candidates in a wise manner, could elect their two to only one of the majority. But still I think the principle of the representation of minorities is right. If a community is composed of 100,000 voters, and 55,000 are of one stripe and 45,000 of another, the 45,000 should have some voice in the administration of the government. I think the objections which are made to the details of the plan of the honorable gentleman from Westchester [Mr. Greeley] may be obviated, if we adopt his proposal of fifteen districts with three Senators in each district, by not allowing any one to vote for more than two Senators; the majority will then elect two and the minority one. This is a simple plan; it is a plan well known to our people; they are accustomed to it; they apply it in the case of inspectors of elections; in the election of justices of sessions; they apply it in some municipalities in the election of boards of trustees; and wherever it has been applied it has given very general satisfaction.

Mr. VERPLANCK — We have been some time in discussing this question, I rise therefore, not to debate the subject but to make a motion. From the remarks of the gentleman who has just spoken it is apparent that many other amend-

ments will be made, some of them of the very highest importance, and it is due to the members of this committee that they have an opportunity in committee to move these amendments. We have been some two days discussing the pending amendment and with a view to allow other amendments to be made, I move that the motion be taken upon the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. ALVORD — I rise to a point of order — that no such resolution can be entertained in the Committee of the Whole.

The CHAIRMAN — The Chair decides the point of order well taken.

Mr. M. H. LAWRENCE — I do not rise for the purpose of debating this question or making a speech; for should I do so I fear it would be only a repetition of what has been already said. But I do feel that I should not be discharging my duties to my constituents properly unless I uttered my protest against the report of the majority of the committee, and expressed the wish and desire to be able to vote for the amendment, as offered by the gentleman from Cortland [Mr. Ballard]. There is no demand on the part of the people of this State for this great change. I believe it is one of the crowning excellencies of the Constitution of 1846 that it did establish the present senatorial district system. If we had any petitions presented to this Convention for this proposed change — if a single petition has been presented in this chamber — I have not had the fortune to hear it. If conventions have been held throughout this State, or public meetings of the people expressive of grievance in this matter have been held, I have not heard from them. Why, Mr. Chairman, it does seem to me that the committee have mistaken the spirit of the times when they proposed a project of this kind. And I differ very much from the gentleman on my right, who told us the other day, in speaking of this subject, that the people would return to the old system with rejoicing. Mr. Chairman, the people of this State would spurn a return to that system. I believe the supreme power rests with the people, and it looks to me as if it was an attempt to take that power away from the people. Gentlemen tell us we should have increased ability and more purity in our Senate. Is that so? I deny it *in toto*. In an argument used in this chamber last winter, when they were discussing how delegates should be elected to this Convention, they resorted to the senatorial plan by way of electing them, as it was in opposition to the plan adopted in 1846, of electing by assembly districts. I am satisfied that the system adopted by the Legislature authorizing this Convention to be elected by senate districts was entirely out of favor with the people. It was decidedly unpopular with the people, and as a proof of that I refer to the fact that in its operation it was simply a nullity. Did you elect the best men in this State on account of having a senatorial system? Did you select on that principle a senatorial representation? My observation leads me to say that the assembly district system was rigidly adhered to in the election of delegates to this Convention. Whenever there was a senatorial election to be had, what



was the operation? Here is the determination on the part of the people, and a rebuke to the plan of having senatorial districts. Why, delegates were elected from each of the assembly districts. They met in senatorial convention, and so strongly were these delegates imbued with the idea that each district must elect for itself that they said to the senatorial convention: "Here, in this county, we have agreed in the convention for such a man."

'Very well; that shall be your man.' The other delegates said that they agreed upon such a man, and acknowledged that the system of electing by districts was the true one. And so far as my observation extends that was literally carried out. The very creation of this Convention is proof of its simple operation, and that the senatorial system does not meet the expectations of the people. Now, I must say that I was greatly amused when I heard the distinguished and venerable gentleman from Rensselaer [Mr. D. L. Seymour] explain the splendid condition of things prior to the Convention of 1846. He told us in that day they were all like grave and dignified Roman Senators. In his language, I think he said, each one of them was fit to be the Executive of the State. Well, now, I do not pretend to be greatly skilled in political matters, neither are my political recollections very vivid; but on looking back to that period I have heard of the "Albany regency," so called, I have heard of corruption within these halls on account of creating bank charters. Gentlemen may say they who have lived through these periods have enjoyed the glories and reveled in the spoils that then surrounded the dominant party, if you please; but that glory is departed, it is no more. It is one of the infirmities perhaps of old age to look back to the period of our early successes as a more glorious era, throwing more roseate colors around our condition when we were more prosperous—at least politically. It is only natural and proper that we should look back to those days as being better than all other days. Since that period there has been nothing but the want of progress according to these gentlemen. I claim, with the Convention of 1846, that this change was the noblest part of their work. There are gentlemen in this Convention to-day who were members of that Convention of 1846, and they know very well that there was a universal desire for the change. Why desire a change if you had such excellent Senators? Why, if the people were satisfied, and the system worked well, was there a clamor for a different system? It is, I claim, an indication that such a system did not work well. I claim that since 1846 this State has prospered as no State ever prospered; I claim, sir, and if I had the records I would show it, that each Senate that has been elected since in this State would compare favorably with any previous Senate. No, sir; I assure this Convention that any attempt on their part to deprive the people of the election of their Senators will be rebuked by them. I again tell you that now at this time the people are amazed at a project of this character. They look upon it as a kind of distrust of their ability for self government. The great trouble in these times is this, that the people are too negligent of their political duties, and if this system of large districts is

adopted, it will tend to destroy all personal interest in the election of Senators, and work a great evil. And if, sir, the members of this Convention have inconsiderately made up their minds that these senatorial districts are best, I hope and trust sir, they will not, from mere pride of opinion adhere to this position, which I really believe is not in accordance with the public opinion of the people of this State.

Mr. S. TOWNSEND—I am in favor of the proposition of the gentleman from Cortland [Mr. Ballard], and still more in favor of the idea of the gentleman from Niagara [Mr. Flagler], because I think it will lead to a better distribution of districts. But I hope the Convention will decide in favor of the proposition of leaving the distribution to the Legislature; we shall have the advantage of a better census than it is admitted on all hands we now have. The erroneous census of 1865 should weigh well in the consideration of this Convention in favor of this idea, that will pass the whole matter of distinctions as to populations and districts over to the Legislature. The question, however, whether Senators shall be elected by large districts, and to what extent that body should be constituted in point of numbers, is one properly before this Convention. The single district system is much commended by the gentlemen on this floor, as adopted by the Convention of 1846, placing the delegate more immediately under the control of his constituents. That is a very great and perhaps controlling advantage in the minds of many. The advantage which might be gained to the State by a longer probation of any gentleman in the Senate is entirely lost by the brevity of their present terms of office. I would be inclined to favor the extension of the term of office for Senators to four years. The advantages of this system were well illustrated by one of the gentlemen up this morning. The able gentleman from Oneida [Mr. Kernan] in speaking on this subject, I believe, used the word "revisory" in reference to the duties of the Senate—and we heard the intimation from him that he would support a diminution of that body. The Council of Revision was an excellent provision that existed down to 1821. If we look at the statute books of 2,000 pages, which we had last year we will find 1,000 laws that were not within reach of scarcely any individual on this floor, or of any individual in the State although six months have elapsed since they were passed. Certainly such a diarrhea of laws was entirely unnecessary. It will be found by consulting the records we have before us, that we have gone on increasing the number of laws from time to time. In the days of creditable legislation previous to 1846 one hundred to two hundred was the average number of acts. After that period, as I understand from gentlemen who were then in the Legislature, but very few laws were passed for a year or two, but for some cause or other (I fear improper influence) we have gone on increasing our laws, until last year they culminated to the number named, and were passed in most cases without due revision or necessity. A board of that character which properly should constitute a committee or section of the Senate, would undoubtedly have a good effect.

Again a council of that nature would be a very proper body to assist the Governor in his oppressive duties of examining the numerous applications for pardon. Under our present system I believe the applications amount to three a day. All of us can well understand that it is impossible to properly consider applications for pardon at that rate, and give the requisite attention to other subjects. I throw out the idea that a revising board would help the Executive in this respect. I hope some persons who have charge of prison matters will endeavor to incorporate such a provision in our amendments. I meant to say in the beginning, that I think in our proceedings we are placing the "cart before the horse." We are now deciding as to how we will constitute the Legislature. We all very well know that there is an anxious desire on the part of our constituents that many of the functions that have been exercised by the Legislature during the last twenty years should be devolved upon our boards of supervisors, and boards of town officers. I listened with a great deal of admiration and satisfaction to the eulogium that was justly paid by the gentleman on my right from Chenango [Mr. Prindle] last evening, upon the character of those boards. It was fortunately, or unfortunately, my privilege, although never having the honor to sit in either of these boards, to come into immediate contact with them during a very trying period, when we were filling our quotas in the recent war; and I must say I met gentlemen on these boards who were, in my estimation, fully competent to sit in either branch of the Legislature. I would, therefore, suggest, that until we know what is the intention of the majority of the Convention with reference to those additional powers which it has been suggested should be conferred upon various boards in municipal governments we can form no correct idea of the character of the legislation that must devolve on the higher bodies. We have very properly in the first instance constituted our electoral body, diving deep down in this instance, I might say almost to the carboniferous strata. I listened with interest to the debates on that subject. I wish the gentleman from Oneida [Mr. T. W. Dwight] had given me some ideas illustrating the result of his conclusions as to the investigations of Livingstone the most recent and thorough investigator of African character in its normal state. But this subject is not exactly in order, and I will not dilate further. To return, I would then carry this idea out a little further; I would go down to the eleven thousand school-districts in this State which often have many hundred thousands, nay millions, of dollars under care of their legislative board for educational purposes. In the case of the board of town officers I believe the Convention of 1846 did order, so far as the word "may" implied—and they were told by the legal gentlemen of the day the word "may" should have the effect of the word "shall"—they did order that such legislation should devolve upon the board of supervisors as was deemed appropriate. But so far from deeming it appropriate to confer that additional power they have, on the contrary, in many portions of the State been deprived of their just rights of legislation and administration. I will not dilate further than to mention what has

been very pointedly alluded to by the gentlemen from Richmond and Rockland [Messrs. Brooks and Conger] in the plan of the majority of the committee with reference to its disproportionate apportionment of some portions of the State. Without going into the minutiae of different districts, I will mention that in the district now proposed to include this I in part represent on this floor, even under the present erroneous census they have allowed but one Senator for 135,425 inhabitants, whilst, as I figure out the proper ratio throughout the State for the district, should be but 115,000, showing there was some 20,000 for each Senator, or 80,000 in excess in that district to be thus disfranchised. But this idea was so fully illustrated and so well put by my colleague from Richmond [Mr. E. Brooks] that I need not dilate on that subject. Again, as to the extent or length of legislative districts, suppose you should adopt the plan of the Legislature of selecting by counties, my revered friend from Suffolk [Mr. Strong] will tell you he will concur with me that the possibility might arise under that arrangement of a delegate being removed a hundred miles in his own county from his constituents. I trust the Convention will thoroughly review that portion of the report.

Mr. WAKEMAN—Sir, when I came to this Convention, if I had been called upon to give my vote, I should have voted in favor of the large district system; and if I had been on the committee that made this report, I should have joined them most heartily in the report they have made. I have listened with some attention to what has been said here during the debate on this question, and I am satisfied from what I have heard that the majority report will encounter considerable opposition from the people of this State in certain localities. For myself, I believe that we should have a Senate more stable and abler, by reason of the organization being in larger districts. I believe that men of experience who are known throughout the district would be more likely to be put in nomination than men of particular localities who were not known even to their localities. I have believed that the organization of our judiciary at the present time, by which we have districts larger than the senate districts, will apply equally to the Senate. We would not think for one single moment of applying the single districts to the judiciary for the reason the best men in the whole district are needed. Take our own district, the eighth, if you please. I would not be willing to be confined to particular localities for a justice of the supreme court. We want the opportunity for choosing the very best men in the entire district. The same rule, I think, would apply to Senators. But I have discovered this in this debate, while I should be satisfied that a single district system would not encounter any serious opposition at the polls, I am fearful that a large district system would. It could be very properly illustrated in the county of Erie. In ordinary times that county will elect a democratic Senator. It may elect from two to three republicans in the Assembly, but the balance would be on the other side. Now, if Erie county is put in the eighth district, there is no hope for the democrats, they could not elect a Senator,

and the result would be the Constitution would receive the hostility of many democrats in that county. If you carry out the same principle in reference to members of Assembly, the body of loyal republicans in that county would be substantially disfranchised because probably the whole county would elect five on the other side. Then at the polls you would encounter the opposition of the democracy in reference to the Senate, and the republicans in reference to the Assembly. Now, if the single district system shall prevail in reference to the Senate it should also prevail in the Assembly for the same reason. From what I have discovered here, I am satisfied we are nearly all disposed to increase the term of office of a Senator. If we increase his term of office and increase his compensation, I believe we shall be able to get a good Senate. I do not mean to say we have not a good Senate now. I know from short experience, when a man enters into legislative duties he is more likely to be imposed upon in the first year than he will in the second year, by the third house. I don't mean to say by reason of being bribed, for I never saw anything of it. But what I mean is this: a man who is a new member is quite likely to meet men who are outside without knowing their real character, and they may acquire an influence over him that he is not aware of perhaps. Therefore he will listen, not knowing their real object in approaching him. But when he ascertains by experience that Mr. A. and Mr. B. are professional lobbyists then he will turn his back upon them. If we can increase the term of office I believe we would probably get out of the difficulty that is upon us now. For myself I should be quite satisfied with a large district system. I believe that is the best system that has been proposed here. But I am satisfied that system will not suit the people as well as the single district system. I have illustrated in the county of Erie, and there are other counties, along the river for instance, where upon a close contest sometimes one party would be successful and sometimes the other, but each party is willing to take the chances for Senator, and this plan would encounter the same hostility there. And so in the city of New York. If we divide the State into large districts the democracy of the State would be represented at that end of the State only. Because as you go west the chances of that party become very slim indeed. That we should have a respectable minority here in members is a salutary principle in my humble judgment. Majorities will always bear watching. That is illustrated in the county of Erie again. There, sometimes, although it is a democratic county, we elect a republican Senator. Sometimes, when it was a republican county, we felt the presence of the minority by reason of their assiduousness, and the watchfulness with which they watched the republicans. I say the minority in all cases has a salutary effect on the majority. Without them we should become more corrupt as parties than we are. I am not prepared now to say how I should be willing to vote, because the whole of the propositions are not before this body. I desire to vote for the best proposition that shall be brought for-

ward without reference as to how it shall operate on the one side or on the other, because my party may be in power to-day and in the minority to-morrow. I hope the time is not very far distant when, if the democracy of this State are to continue, that it will be divided among the different portions of the State, and not confined to the cities of New York and Brooklyn. I believe the proposition of my colleague from Niagara [Mr. Flagler] is the one most feasible; that is, it would suit the people better than any other now before this Convention. I shall listen, as I have heretofore listened, with care to what may be said by any member. I shall be prepared to vote for what I believe to be the very best plan for the benefit of this State in raising the character and stability of the Senate, and to complete our labors here by giving to the people of this State the very best plan for the organization of the Legislature we can get, after we have listened to all that can be said on the subject from all sides of this chamber.

Mr. BICKFORD—I feel compelled to dissent from so much of the report of the committee as relates to the senate districts. Prior to the meeting of the Convention of 1846 the question of single districts attracted great attention. The question was much agitated. If there was any one question, one item of reform more emphatically demanded by the people than another, it was that the large districts be abolished, and that single districts should be substituted in their place. The Convention of 1846 obeyed the popular voice, which was outspoken and determined on this point. The system of single districts has been tried, and has worked well and satisfactorily to the people. I see no evidence that they either demand or expect a change in this particular. I feel certain that a return to the large senatorial district system would be received by the people most unfavorably. Whether the Convention shall make the districts, or leave them to be made by the Legislature, will make no difference. It is impossible to divide the State into eight senatorial districts without giving very great dissatisfaction, and without much of seeming unfairness. I believe the committee have intended to act fairly in their division, but they encountered difficulties that were insuperable. The difficulties belong to the system, naturally and inevitably. It is entirely impossible to arrange these eight districts in such a manner as shall not seem to be what used to be called a "gerrymander" for obtaining improper political advantage. I believe, too, that the gentleman from Rensselaer [Mr. M. I. Townsend] was correct in saying that the people would not sanction the proposed change, and that its adoption by the Convention would be likely to defeat the Constitution before the people, however excellent its other provisions might be, and I am, therefore, most decidedly in favor of adhering to the single district system of electing Senators, as far as they shall be elected, by districts. But while the Convention of 1846 obeyed the popular will in adopting single senate districts, they went further and adopted single assembly districts also—a change which the people did not demand. There was no call on the part of the people for single assembly



districts. The people had before elected members of assembly by counties, and they were satisfied with that system, and a trial of twenty years of the single district system, in electing members of Assembly, has, in my judgment, been sufficient to condemn that system. It is a system emphatically designed and calculated to bring small men into the Assembly, and I insist that although the character of the Senate has been for the last twenty years equal to what it was before, yet that the character of the Assembly has not. It has greatly deteriorated. I am, therefore, hopeful that this system of single assembly districts will be abandoned, and I am prepared to welcome a return to the plan of electing by counties, unless another plan, which I prefer, and which I will directly mention, shall meet the favor of the Convention. I would be glad, if possible, to unite with gentlemen in some practical scheme for the representation of the minority. I had the honor of introducing a proposition, embracing this proposition in part, early in the Convention. Gentlemen will find it on pages ninety-six and ninety-seven of the Journal. It is there sketched as follows:

*Resolved*, That it be referred to the Committee No. 2 on the Legislature, its Organization, etc., to inquire as to the expediency and propriety of providing for the election of 180 members of the Assembly, and of 45 members of the Senate; 144 of the members of the Assembly to be elected in districts entitled to elect not less than three nor more than six members, and the other 36 to be elected for the State at large as personal representatives, each elector throughout the State to be entitled to vote for one personal representative in the Assembly, and the thirty-six receiving the highest number of votes to be elected; also each elector throughout the State to be entitled to vote for one personal representative in the Senate, and the nine persons receiving the largest number of votes to be elected, and the other 36 Senators to be elected in districts entitled to elect one State Senator only.

This plan embraces the single district system for a part of the Senators, and personal representatives for the rest. It will do something toward the representation of minorities, though perhaps not all or as much as is desirable. It introduces the plan of the representation of *persons*, as well as of *places*. It will enable men of talent and of great capacity for usefulness to find seats in the Legislature, although there is no local majority holding their political views. It will enable men of ideas, in advance of the age, to give a voice in our public councils, and it will not give that undue advantage to a political minority, which will be the inevitable result of the scheme proposed by the gentleman from Westchester [Mr. Greeley]. This plan also embraces the election of four-fifths of the members of Assembly by districts, though not by single districts. It will necessitate the division of only two counties, New York and Kings, in the formation of these districts. For one-fifth of the members I propose a personal representation similar to that proposed for Senators. While I do not claim that my scheme is superior to any other that may be devised, I think it worthy of consideration, and I hope

that it may meet a favorable consideration; but if not, I shall favor the election of single senate districts, and the election of Assemblymen by counties, as the best thing that is now attainable. The scheme of the gentleman from Westchester [Mr. Greeley] is only one for giving two members from a district to the political majority in that district, and one to the minority. It would be better, therefore, to provide plainly and distinctly that each voter may vote for two, and that the three highest shall be elected. The scheme amounts to that, so far as results are concerned. As it stands it is only an intricate, inobvious and involved plan of obtaining a result which can be obtained very directly and plainly. I object to any scheme which shall enable a minority in a district to elect one-third of the representatives, because it gives an undue advantage to the minority in the State. Under such a plan, if one party were to carry ten of the fifteen districts proposed, and the other only five, the stronger party would have only twenty-five senators, and the minority twenty. That is, while carrying two-thirds of the districts they would have only five-ninths of the senators, a trifle more than half. Such a great advantage to the minority cannot be claimed on the score of justice, and I fail to see its expediency. The only sensible scheme of the representation of minorities that should at the same time preserve a due preponderance to the party that is in the majority in the State would be this —

Here the gavel fell, the gentleman's time having expired.

Mr. RUMSEY — I am opposed to the report of the majority for one reason, because it does not make a fair and equal distribution of the representatives for the first district; and although I have no particular fondness for that district, still I desire to see equal justice meted out to it. I am opposed to it, sir, for another reason. I am in favor of single districts. I do not believe for one moment that any want of respectability or dignity there may have been about the Senate for the last twenty years, if any such there has been, arises from the fact that the Senators are elected by single districts. It arises rather from the fact that their short term of office prevents them from becoming familiar with the duties of their office, and, therefore, the evil lies in that, and not in the manner in which they are elected, because I have no doubt that in every district you can make in this State you will find men qualified to fill the office of Senator and throw around it all the dignity that is required for that position, and it has this advantage, that it brings them nearer home, nearer to the people than they otherwise would be. But if the majority of the Convention shall see fit to make large districts I desire to see them made as perfect as possible, and I have an amendment which I propose to offer when it shall be in order. The only object I have in rising now is to spread that proposition before the committee that they may be enabled to judge what distribution can best be made of the districts in the State which shall insure full justice to New York and all the other portions of the State. In the city of New York, by the arrangement which has been made by the committee, they are deprived of representation for 54,000 of its population. This

ought not to be. It can be remedied very easily, and I would make large districts if the majority of the Convention desire large districts by making them eleven in number and requiring that all the counties of the State should remain undivided except the city and county of New York, and by attaching that to the county of Queens or some other county, you can make two districts, and in that way they will get precisely what they are entitled to—six Senators from these two districts—which would leave an excess in the representative population of only about three thousand. I propose to send this proposition of mine to the Clerk to have it read, in order that it may be before the Convention.

The SECRETARY proceeded to read the proposition of Mr. Rumsey, as follows:

The Senate shall consist of thirty-three members. The Legislature, at its session to be held in the year 1868, shall divide the State into eleven senate districts, to be composed of convenient and contiguous territory, each of which shall contain, as near as may be, an equal number of inhabitants, excluding aliens. No county shall be divided in forming such districts, except the city and county of New York. Each district shall be entitled to three Senators. The whole Senate shall be chosen at the first election to be held under this Constitution, and they shall classify themselves so that one Senator in each district shall go out of office at the end of each year after the first. After the expiration of their terms under such classification, the terms of their office shall be four years.

Mr. RUMSEY—New York has a representative population of 574,548, Queens county has 52,400, making a total of 626,949.

Mr. M. I. TOWNSEND—Does the gentleman intend to have thirty-three Senators or forty-four?

Mr. RUMSEY—I intend to have thirty-three, the same number as recommended by the majority report of the committee.

Mr. M. I. TOWNSEND—And you only provide for an election once in four years.

Mr. RUMSEY—I understand that. There is no difficulty at all in electing one Senator right along each year. The first one goes out of office in two years, the second in three years and the third in four years. It is not at all necessary that the terms of all should expire at the expiration of three years. This proposition, if New York and Queens be taken for two districts, gives a representative population of 626,944. The ratio for a Senator is 104,017 and by giving six Senators to the two districts thus to be formed 624,000 of the population would be represented, leaving an excess of only about 3000—in the two districts. This will do them full justice and if we are to have large districts they had better be made in that way. The other districts can be formed as may be necessary in view of the population of the counties. I am also opposed to the project of districting the State in this Convention. I think we had better leave to the Legislature the formation of the districts, and thus keep clear of what I fear will otherwise prove a disturbing element both in this Convention and before the people.

Mr. McDONALD—I rise to support the proposition which has just been advanced by the gentleman from Steuben [Mr. Rumsey], and also to argue in favor of that of the gentleman from St. Lawrence [Mr. Brown]. It does seem to me, as has been stated by the gentleman from St. Lawrence [Mr. Brown], that if we intend to take any advantage of what experience teaches us, we will do as he has indicated; we will avoid the mistakes that the Convention of 1846 made, while we will take warning of the evils which they attempted to and did avoid. Now let us see what were the evils that the Convention of 1846 intended to abolish. They unanimously almost, almost to a man, agreed that the old system was an evil. Now why was it? It was for the very reason that the gentleman from Rensselaer [Mr. M. I. Townsend] stated. This proposition of the people ruling is all right, but if you go too far from the people, then the between men, commonly called politicians, will so change the will of the people that when they come to be finally represented in these large districts, it will not be honestly the will of the people; but instead of the will of the people, you will have the will of the politicians. That was the real evil that they intended to remedy. Now they, like everybody else, for such is human nature, in avoiding one evil unwittingly run into another. The human mind is like the surface of a broad lake. When it is blown upon by the wind in one direction, its waves run up too far on the shore on the other, and then they return back again, until it finally settles at its true level; so the Convention of 1846, in attempting to avoid the evils of large districts, went too far in the opposite extreme. That is, it made the Senate too much like the House, as stated by the gentleman from Chautauqua [Mr. Barker]. The reason for two bodies is plain. One is a check on the other. The Senate should be more fixed, to express as it were the public mind, crystalized and fixed, while the House should represent the waving public mind just as it is from time to time, and one being a check on the other thus a safe legislation will be had. I care not how you divide the State. Take the proposition of the gentleman from Steuben [Mr. Rumsey]. Divide the State into ten districts or eleven; divide it into anything, I care not what, so that the political division will be radically different from the present or any other political division of the State, and thus you will get very important advantages. Suppose you divide it into fifteen districts. With regard to the western part of the State I have figured a little, and I find if you divide it into fifteen your unit will be 228,537 inhabitants, excluding aliens. Commencing with the western part of the State, you take Erie, Chautauqua, Cattaraugus, and you get 231,561. That is 3,000 more than the unit. You take Monroe, Niagara, Orleans, Genesee and Livingston, which are connected by railroads, and you get 227,127, which is only one thousand less. Take Wyoming, Allegany, Steuben, Schuyler and Chemung, and you get 229,214. You take Wayne, Ontario, Cayuga, Seneca, Tompkins and Cortland, and you get 219,377. I do not say this is right. It is

only an illustration of the plan. The benefit which is to come from it is simply this. Any person living in the western part of the State knows this, that a nomination is worth more than an election at any time, because it is as it were a sure certificate for election. A person who gets the nomination in the western part of the State, in the present state of affairs, unless he is a very bad man, is just as sure of getting elected as a man who has a pass without any liability of injury at all. He does not run any liability. He has a certain thing. So that for the purposes of the people it is fully as important to so arrange under the present state of circumstances that the people are not, as it were, figured out of their wishes. Now, how is it done? It so happens that under the present arrangement that often the congressional district and senatorial district are identical. In such case a man who is a candidate for Congress in one county is very foolish if he has not a candidate for the Senate in the other. He usually so arranges, and the candidate for Senate in one county and his friends are always in favor of the candidate for Congress in the other. I am in favor of a radical redistricting of the State, in such a manner that this political division of senate districts shall differ from any other political division, and thus prevent what is commonly called "log-rolling" in nominations. This is an important thing, and I think if we accomplish this we have done one good thing. You take and divide this State into thirteen, eleven, or fifteen districts, and the districts will so run across and divide every other political division that Mr. Congressman from one county cannot make an agreement with Mr. Senator in another, for the reason that Mr. Senator will be in a different congressional district, and he cannot be benefited thereby, and men do not make bargains unless it is for the mutual benefit of both. It seems to me, for this reason, that if we redistrict the State we will thereby avoid the great evil that the Convention of 1846 attempted to avoid. Now let us see if we get any benefit. If we take thirteen districts, or you can have it in the way the gentleman from Steuben [Mr. Rumsey] proposes; I care not about the particular way you divide it. Take thirteen districts, three in each district, and we have thirty-nine Senators, but if you elect one every year we have a Senate of thirty-nine. You will have a fixed body, thirteen of them to go out every year, and we have thirteen new ones brought in fresh from the people, and twenty-six remain. In that way we get a fixed body, and we have all the advantages of the Senate before 1846. We get a practical check upon the House in any of its hasty legislation. We avoid in that way the troubles which the plan of the gentleman from Niagara [Mr. Flagler] suggests. In the present state of affairs colonization is all bosh, and will not be attempted for the very reason that it will not pay to colonize. The idea of colonizing the district which I have the honor in part to represent, with its three thousand majority, is preposterous. It cannot be done. The idea of colonizing in New York, a district where they have from nine to ten thousand majority. It cannot be done. We are in an anomalous state

of affairs. The political majority in one part of the State is heavy in one way, and another part is heavy in another. But we are not always to suppose that this state of things is always to exist. Parties are liable to change. The human mind may change, and it may be that before ten years the different parties may become very nearly balanced. It is under such circumstances colonization takes place. If the Senate gets to be very nearly a tie, and you can elect a Senator in the odd district by spending about ten thousand dollars, I guarantee you will find plenty of men in this State ready to spend ten thousand dollars. Ten thousand dollars will support four or five hundred voters for four months in almost any county in the State, and under that state of affairs it is pretty important to provide protection against colonization. If you take the Senate districts and arrange them irregularly and the Senate happens to get just even, so that the election of the eight that are to come will change the character of that Senate by one; if there is a close district, there is a fair opportunity to colonize that district from the other twenty-four districts, which do not take part in the election. They can spare a good many votes, for they can just as well vote for Governor and State officers in one county as another. In expectation of what may happen, we ought to provide against this colonization. This is what the Convention of 1846 attempted to provide against. That is the only objection I have to the plan of the gentleman from Niagara [Mr. Flagler], that if the time comes when the Senate is politically nearly tied, and it is worth while to colonize, it affords them a very fine opportunity. But in the way it is now suggested to divide the State into districts to be entirely and distinctly different from any other political division of the State, you get the advantage of the plan which we have followed since 1846, and you also get the advantage of the plan that we had before 1846. You, as far as you can, avoid all opportunities as it were to "log-roll" a man into a nomination and thereby into an election, and you at the same time get a Senate that has stability and will not change every year. You also get the benefit of experience, they have three years experience. Thus, you get all the advantages of the two plans that have been so well illustrated by so many gentlemen on this floor.

Mr. GARVIN—I do not desire at this late time to make any remarks on the report of the committee, but I desire to read the following resolution which I shall by and bye offer for the consideration of the Convention and make such remarks, in reference to it, as I think proper.

The SECRETARY proceeded to read the amendment of Mr. Garvin, as follows:

Section 2, line 4. Strike out "one" and insert "two," so that it will read:

"The first district shall consist of the city and county of New York, and shall be entitled to two additional Senators."

Mr. BALLARD—We are now near the hour of adjournment and as we are not prepared to take a vote, I move that the committee do now rise, report progress, and ask leave to sit again.



The question was put on the motion of Mr Ballard and declared carried.

Whereupon the committee rose and the PRESIDENT *pro tem.* resumed the chair in Convention.

Mr. ARCHER, from the Committee of the Whole, reported that they had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

Mr. T. W. DWIGHT—I move to modify that with instructions to take a vote on the amendment now pending on Wednesday morning, as the first business.

Mr. MERRITT—I would move to amend that to take it on Tuesday evening.

Mr. T. W. DWIGHT—If that is the general desire I accept it.

Mr. VERPLANCK—Will the gentleman say Wednesday evening instead of Tuesday evening?

Mr. MERRITT—Tuesday evening.

Mr. VERPLANCK—If the gentleman insists upon this. I think it better to take Wednesday evening. Very many members have been excused for Monday and Tuesday evening, and they will not be here until Wednesday. If the gentleman insists upon this, I shall insist upon calling the attention of the President to the fact that there is no quorum present.

Mr. HARRIS—I do not think the Convention is in a position to take any order of this kind at this time. I hope this proposition will be allowed to lie over until the Convention shall re-assemble, when we can have a larger number of members present.

Mr. GARVIN—I think this motion should lie over for the present, and the question taken at a later day when a full Convention shall be present. I know there are several gentlemen who desire to make some remarks in reference to the report of the committee, and it is desirable that on a question of this importance there should not only be a full and fair discussion and due consideration, but that every member should have an opportunity to be here and vote. I know one of the distinguished members of this Convention who expects to be here on Tuesday. He may not be here until late in the afternoon, and may not be able to present his views on this question until that evening. I think the Convention will desire to hear him, and they will not only hear him with great pleasure, but will be enlightened by his views. This is one of the most important questions that has come before us, and you will find when our labors come to be submitted to the people, and they read the debates which have taken place in regard to this very question, that it is one in which they take the very deepest possible interest. I know in regard to my own constituency in the city of New York, that there is no question that could be presented to this Convention in which they feel a deeper interest than in the one now under consideration. I have lived in the country many years. I recollect very well in regard to this question, when it was up for the consideration of the Convention of 1846, it was not only embar-

assing, but it was a question in which the people felt such an interest that it came very near defeating the Constitution. You recollect the vote was very light. I desire to make a good Constitution. If the Constitution is to be adopted by the people, and I think that is the desire of the delegates, we should not be precipitate in regard to questions of such importance. I therefore hope that this matter will be deferred for the present and acted upon in full Convention. If, Mr. President, when there is a full assemblage, the Convention shall hold that this question be taken without debate, I have certainly no objection. I do not wish to occupy the attention of this body with any extended remarks, but I do desire when questions of this description are acted upon we should not only have a full Convention, but a full and fair opportunity on important questions to express our views.

Mr. T. W. DWIGHT—My object in bringing forward this amendment was to make it clear that we should not take any vote on Monday, nor until gentlemen should be present, and not for the purpose of hurrying the vote, but for fixing a period up to which it could not be taken, and as it appears there is a disposition not to have any time fixed, and the understanding seems to be it is not to be taken on Monday, I will withdraw the proposition and now move to adjourn.

Mr. LAPHAM—I suggest to the gentleman from Oneida [Mr. T. W. Dwight] to modify his resolution into one of instruction to the Committee of the Whole to take up the other portions of the report in the mean time.

The PRESIDENT *pro tem.*—The Chair will inform the gentleman from Ontario [Mr. Lapham] that the gentleman from Oneida [Mr. T. W. Dwight] has withdrawn his resolution.

Mr. LAPHAM—Then I make that motion. I move, sir, that in granting the leave to sit again, it be with directions to the Committee of the Whole to take up the other sections of the report before passing on the one now under consideration, if they choose to do so.

The PRESIDENT *pro tem.*—The Chair understands the motion that the committee have leave to sit again is coupled with instructions to pass the particular section under discussion and take up the other sections of the report.

Mr. McDONALD—Under such instructions as that would it be exactly proper for the Committee of the Whole to discuss any section?

The PRESIDENT *pro tem.*—The Chair must leave that to the Committee of the Whole.

Mr. McDONALD—I am informed that there are gentlemen not present, and also others who are present, who are desirous of addressing the committee and saying something in regard to the question now pending, and I hope no directions which, while it might not be a prohibition, would be an indication—

Mr. M. I. TOWSEND—I desire to ask the gentleman a question. The motion is submitted by the gentleman from Ontario [Mr. Lapham] to authorize the Committee of the Whole to pass this subject if it should see fit to do so, but proposes to leave it under the control of the committee and authorizes them to do so if they desire.

Mr. McDONALD—Then it is of no use. If it

only an illustration of the plan. The benefit which is to come from it is simply this. Any person living in the western part of the State knows this, that a nomination is worth more than an election at any time, because it is as it were a sure certificate for election. A person who gets the nomination in the western part of the State, in the present state of affairs, unless he is a very bad man, is just as sure of getting elected as a man who has a pass without any liability of injury at all. He does not run any liability. He has a certain thing. So that for the purposes of the people it is fully as important to so arrange under the present state of circumstances that the people are not, as it were, figured out of their wishes. Now, how is it done? It so happens that under the present arrangement that often the congressional district and senatorial district are identical. In such case a man who is a candidate for Congress in one county is very foolish if he has not a candidate for the Senate in the other. He usually so arranges, and the candidate for Senate in one county and his friends are always in favor of the candidate for Congress in the other. I am in favor of a radical redistricting of the State, in such a manner that this political division of senate districts shall differ from any other political division, and thus prevent what is commonly called "log-rolling" in nominations. This is an important thing, and I think if we accomplish this we have done one good thing. You take and divide this State into thirteen, eleven, or fifteen districts, and the districts will so run across and divide every other political division that Mr. Congressman from one county cannot make an agreement with Mr. Senator in another, for the reason that Mr. Senator will be in a different congressional district, and he cannot be benefited thereby, and men do not make bargains unless it is for the mutual benefit of both. It seems to me, for this reason, that if we redistrict the State we will thereby avoid the great evil that the Convention of 1846 attempted to avoid. Now let us see if we get any benefit. If we take thirteen districts, or you can have it in the way the gentleman from Steuben [Mr. Rumsey] proposes; I care not about the particular way you divide it. Take thirteen districts, three in each district, and we have thirty-nine Senators, but if you elect one every year we have a Senate of thirty-nine. You will have a fixed body, thirteen of them to go out every year, and we have thirteen new ones brought in fresh from the people, and twenty-six remain. In that way we get a fixed body, and we have all the advantages of the Senate before 1846. We get a practical check upon the House in any of its hasty legislation. We avoid in that way the troubles which the plan of the gentleman from Niagara [Mr. Flagler] suggests. In the present state of affairs colonization is all bosh, and will not be attempted for the very reason that it will not pay to colonize. The idea of colonizing the district which I have the honor in part to represent, with its three thousand majority, is preposterous. It cannot be done. The idea of colonizing in New York, a district where they have from nine to ten thousand majority. It cannot be done. We are in an anomalous state

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Mr. BALLARD—We are now near the hour of adjournment and as we are not prepared to take a vote, I move that the committee do now rise, report progress, and ask leave to sit again.

tleman from Lewis [Mr. E. A. Brown]. Now, sir, it seems to me, that we should proceed with this call; we can suspend it any time when it shall become necessary for us to go into the committee at four o'clock without any difficulty; but if we proceed with the call we shall have, regularly, according to parliamentary usage, the gentlemen who are absent, in contempt of the orders of this Convention, and can call them to an account when in our opinion we see fit to do so. In addition to that we shall have them upon the record as having violated one of the rules of the Convention. If it goes no further than that, it may be that in the future, under the arrangement which has been made deliberately by the Convention, they will endeavor to comport their views of their duty somewhat to the desires and necessities of this Convention. Sir, we have in the past week, after deliberation and with a desire to accommodate these gentlemen who are in the habit of going away from us, adopted a plan which they agreed was entirely satisfactory, and would result so far as they were concerned in their prompt attendance upon the duties of the Convention in its future sessions. Under the resolution offered by the gentleman from Oneida [Mr. T. W. Dwight] we deliberately agreed that commencing with this week we should meet on Monday at ten o'clock; that we should adjourn promptly on Friday at one o'clock, over until the succeeding Monday at half-past seven o'clock, and then upon that week to adjourn on Saturday at one o'clock over until the next Monday at ten o'clock, giving each alternate week half of Friday, the entire of Saturday and the whole of Monday until half-past seven o'clock to gentlemen to absent themselves away from their duties in this Convention legitimately and according to our rule. Here, upon the very eve of commencing this arrangement which was acceptable to the gentlemen who were in the habit of non-attending at this particular stage of our sessions, we find ourselves this morning without a quorum. I hope, therefore, the gentlemen who are absent will be put upon our roll as absent under the call of the Convention, if we do not proceed to order the sergeant-at-arms to find them out wherever they may happen to be throughout the State.

Mr. BALLARD—I rise to inquire whether it would involve the necessity of the members who are present remaining here during the execution of the call.

The PRESIDENT *pro tem.*—The Chair is of opinion it would.

Mr. BALLARD—Then I hope this call will not be made; it will deprive the members of the committees of an opportunity to discharge their duties. It seems to me that if the names of the absentees are called and entered upon the roll as absentees, it will answer all necessary purposes as an admonition that those members who are absent must be present in the future. I hope, therefore, this call will not be made.

Mr. BELL—I have steadily opposed a call of this Convention thus far, and have been willing to take the view that the gentleman from Cortland [Mr. Ballard] suggests, that by entering the names of the absentees upon the roll it might be a suffi-

cient admonition, but we have continued that process for two months and the admonition has not proved salutary. We are left here every week, nearly, without a quorum. Now, sir, I am in favor of taking some measures that will secure a quorum, and as has been properly remarked by the gentleman from Onondaga [Mr. Alvord], this arrangement by which we are to have every alternate Saturday has been entered into by the absentees themselves, and they ought certainly to abide by their own arrangement, but it seems they do not, and if we are to continue this plan as suggested by the gentleman from Cortland [Mr. Ballard] it will only be to continue one-fifth of the time at least, without a quorum. I believe the time has come when we ought to take more effective means to get a quorum, and compel the members to comply with the arrangements made here last Friday or Saturday. I know it is disagreeable for gentlemen to be brought here under a call; but is there any other means of securing a quorum? We have resolved to adjourn on the 10th day of September. Now, sir, if we continue to go on as we have, we will not have completed our labors nor anything like it. This matter, sir will be under the control of the Convention, and when a majority present think the call has proceeded far enough, they can take the back track; but until we do secure a quorum I think the call had better be proceeded with.

Mr. SEYMOUR—I am as desirous as any other member of this Convention of proceeding with our business. If I supposed that a call of the Convention at this time would really result in any good, I should vote for it, but I am opposed to it because I have seen in legislative bodies many calls made and very few executed and carried through. It will result only in a long delay, and prevent members that are here, from attending to business, without producing what we aim at, the attendance of the members of the Convention. It is well understood, I think, by the members here, that nearly all who are absent, are out of the city, and if we dispatch the sergeant-at-arms for the purpose of bringing them in, we cannot do it without he himself departs from the city, and we shall not have the absent members in attendance, certainly for this forenoon. Public attention has been called to it, and it will be reported in our proceedings that a number were here ready to proceed with the business of the Convention, and organized, and were unable to do business by reason of the absentees depriving us of a quorum. I think the better way would be to adjourn. I hope, therefore, the Convention will not proceed with the call.

Mr. OPDYKE—What we desire is to make all possible progress with the business before us. It is known that Monday morning is the most difficult time for members who visit their homes to be here so as to enable us to have a quorum. I, for one, feel very lenient toward those who are absent on Monday morning; the trains do not get here in time, and many of them avail themselves of the Sabbath and spend it at home, and find it impossible to return as early as ten o'clock; but I notice since the roll was called a large number of members have



does so it amounts to nothing; it is either a prohibition or an indication.

The **PRESIDENT pro tem.**—The Chair will state for the information of the gentleman from Ontario [Mr. Lapham] that, under the idea the Chair has, if the Committee of the Whole are not permitted so to do they have no right to do so.

Mr. **BALLARD**—I hope we will dispose of this question with regard to the districts of this State.

Mr. **SCHOONMAKER**—As the hour fixed for the adjournment has arrived, I move that we do now adjourn.

The **PRESIDENT pro tem.**—Will the gentleman withdraw his motion for the present, until the question is put upon granting the committee leave to sit again?

The question was then put upon granting the committee leave to sit again, and it was declared carried.

Mr. **MERRITT**—I would say, on the part of the committee, that they are desirous of giving reasonable time for discussion, but I wish to say it is their purpose to try and get a vote on this proposition on Tuesday evening. If at that time it is necessary to go over another day, it can. But it will be our purpose to reach the vote at that time, but at the same time to give reasonable time for full discussion.

The hour of adjournment having arrived, the Convention stood adjourned till Monday at ten o'clock A. M.

MONDAY, August 5, 1867.

The Convention met at 10 o'clock A. M. the President *pro tem.* [Mr. **FOLGER**] in the chair.

Prayer was offered by the Rev. M. **GRIFFITH**.

The Journal of Saturday was read by the **SECRETARY** and approved.

Mr. **BELL** presented the petition of Henry Spicer, E. S. Tallman, and twelve other citizens of Brownsville, Jefferson county, asking for a provision in the Constitution securing "the right of fishing in the international waters bordering on this State, etc."

Which was referred to the Committee on the Preamble and Bill of Rights.

Mr. **BELL** also presented the petition of thirteen citizens of the town of Brownsville, Jefferson county, on the same subject.

Which took the same reference.

Mr. **BICKFORD** presented the petition of Charles W. Washburne, and forty-nine others, citizens of Brownsville, Jefferson county, on the same subject.

Which took the same reference.

Mr. **BARKER** presented the petition of fifty-one citizens of Dunkirk, Chautauqua county, asking for a provision in the Constitution prohibiting the donation of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. **DUGANNE** presented the petition of Cornelius F. Varrath, John Westervelt, Horace Waters, and one hundred and seventy-six others, on the same subject.

Which took the same reference.

Mr. **SMITH**—If in order, I would like to ask leave of absence for the day for Mr. Landon.

There being no objection, leave was granted.

Mr. **BARKER**—I move a call of the roll of the Convention.

The question was put on the motion of Mr. Barker, and it was declared carried.

The **SECRETARY** proceeded to call, and the following gentlemen answered to their names:

Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Baker, Ballard, Barker, Bell, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Champlain, Chesebro, Clark, Clinton, Conger, Cooke, Corning, Daly, Duganne, C. C. Dwight, T. W. Dwight, Ely, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hale, Hammond, Harris, Hitchcock, Ketcham, Kinney, Krum, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Mattice, Merrill, Merritt, Merwin, Opdyke, A. J. Parker, C. E. Parker, Pond, Potter, Prosser, Rathbun, Root, Rumsey, L. W. Russell, Schell, Schumaker, Seaver, Seymour, Silvester, Smith, Spencer, Strong, Tappan, S. Townsend, Van Campen, Van Cott, Wakeman, Wales—72.

The question was put on the motion of Mr. Barker, and it was declared carried.

Mr. **CHESEBRO**—I move that we adjourn until half-past seven o'clock this evening.

Mr. **SEYMOUR**—Would it be in order to move for an earlier hour?

The **PRESIDENT pro tem.**—The Chair is of opinion it would not.

Mr. **SEYMOUR**—By four o'clock I think we would have a quorum.

The question was put upon the motion of Mr. Chesebro, and it was declared lost.

Mr. **GOULD**—I move that the Convention take a recess until four o'clock this afternoon.

Mr. **ALVORD**—I hope not, Mr. President. Four o'clock is the only time we shall have to do anything in committees, and it is generally understood one or two of the important committees meet at four o'clock.

Mr. **GOULD**—I will withdraw my motion.

Mr. **BARKER**—I move a call of this Convention, and hope that it will be executed. I dislike to make this motion, but I deem it due to those who are kept here over Sunday.

Mr. **E. A. BROWN**—If we take a recess until half-past seven o'clock this evening, the members who are in town will have an opportunity to attend to their duties as committeemen and whatever other duties they may have to discharge; if we come here at four o'clock we may be able to transact some business, but there may not be a quorum present at that hour. Therefore, it will follow that if we pursue this idle ceremony of calling this Convention, we shall waste to-day, and those who are here and who may be able to discharge some duties outside of the Convention, will have their time frittered away, and no gain whatever result from it. I trust, therefore, if in order, we shall take a recess until half-past seven o'clock, so that we may be able to do something in the course of this day outside of this hall, if not within it.

Mr. **ALVORD**—It strikes me, sir, that it is not in order under this motion of the Convention to take the question on the motion from the gen-

call were it not for certain peculiar circumstances which I am cognizant of in regard to the difficulty of getting from New York to this city on the first of the week. I attended last night at the wharf, expecting that the usual boat would be still pursuing her trips to the city of Albany, but I found she had been taken off and a small boat placed in her stead which could not accommodate the number coming up. I presume a great many gentlemen in the city of New York have been detained on account of this arrangement. I should be in favor of excusing them on that account; therefore, I move to suspend the call until one o'clock.

Mr. LAPHAM—When the gentleman from Wyoming [Mr. Merrill] on Saturday moved for a general leave of absence for all the absentees, I opposed the proposition on the ground that the Convention having adopted a rule of business and order of adjournment by which it should sit one week until Saturday noon and adjourn until Monday morning and the next week until Friday noon and adjourn until Monday evening, there is no longer any excuse for members of this Convention being absent without leave. I hold, sir, that in view of the resolution we have adopted that we will adjourn *sine die* on the 10th day of September next, there is no longer any apology for any member of this Convention to absent himself except upon an excuse which is satisfactory to the members of this body, and in pursuance of which they may grant him leave to be away. I am, therefore, in favor of proceeding with this call, and I hope the delegates here present will view the case in the light of owing it to their self-respect as well as to a sense of duty, to demand that some steps shall be taken that will effectually prevent absences of this character in the future deliberations of this Convention. Unless this can be done the result is, that the whole of Saturday and the whole of Monday are lost in our deliberations. Such has been the case from the organization of the Convention to this time and such will be the case in the future deliberations of the Convention unless we can do something to carry into a practical effect the resolution which we have adopted. Now do let us adopt resolute measures, and earnest measures. Do let us show that this proposition to bring the labors of this Convention to an early termination, as evinced in the resolution adopted last week, is an earnest and sincere one, one which we believe was not resorted to as a piece of clap trap, but is a real intention and desire to bring the labors of this Convention to a close at the earliest possible day.

Mr. FLAGLER—I would inquire how many members are now shown to be present.

The PRESIDENT *pro tem.*—The Secretary informs the Chair that there are 69 members now present.

Mr. CLINTON—There is a great deal of wisdom in these old sayings, and my impression is that the time has come when it is our manifest duty to "throw stones." We have tried resolutions and persuasive words, and they have been ineffectual; we have tried a call of the roll, and that has been ineffectual. Now let us have a call of the Convention.

Mr. VAN COTT—I hope we will throw stones if we pretend to throw stones. There is just one deduction to be made from the observation of my friend from Ontario [Mr. Lapham]. We adopted the resolution as to the order of business late in the week, not giving members sufficient time to make arrangements at their own places of business for the new order of things, and many gentlemen had to go away to make those arrangements, intending when they went to adhere strictly to those arrangements in the future. Then, it is to be borne in mind also, that we gave leave of absence to enough gentlemen to make up a quorum this morning. We are without a quorum, therefore, by our own action, and that I think ought to be considered. I am in favor of yielding to the pressure of these considerations for one day, and "for one day only," as they say upon the bills. But if we do not take that course, then there is another course due to our self-respect. If this call is to be proceeded with, it ought to be proceeded with to the last extremity. We have had one partial call of the Convention already; we have called names, and pretty hard names, too. We resolved to do some very frightful things, and ended in doing nothing, as might be expected; producing no effect whatever upon the attendance on the Convention. Let us stop here or go forward. If gentlemen who propose this call mean it, so that they will put every man in contempt who is absent without a good excuse, and proceed to the extremity with him—if they will not yield to the course I suggest and go with me, I will yield to the course they suggest and go with them if they go so far, but do not let us go through this idle form of calling names and putting gentlemen on the record as absentees, and make a great flourish of trumpets, with after all no list of killed and wounded, and only a large display of "missing." Let us do the work effectually, or not do it at all. I prefer waiting, but if gentlemen do not wish to wait let us go on and secure for the future a quorum of this Convention to the end of the session.

Mr. KETCHAM—I think we had better adjourn to Saratoga and then nobody will want to go home.

Mr. GREELEY—I desire to offer this as a substitute.

"Resolved—that the roll of the Convention be called at 11 A. M. each day and every member not then responding, shall be held to forfeit his pay for that day." I think you will find that rule will give us a quorum every day.

Mr. ALVORD—I will suggest to my friend that, in the absence of a quorum, we cannot pass any such resolution.

The PRESIDENT *pro tem.*—The resolution is in order, but it cannot be entertained at the present time as we have no quorum.

Mr. VAN CAMPEN—I most fully agree with the gentleman who last spoke in regard to this matter. Owing to the circumstances that a resolution establishing a new order was adopted late in the week so that gentlemen hardly had notice of it, and had no time to arrange their business, I think on the whole it would be perhaps unwise to enforce a call of the Convention at the present time, but if a majority of the members think it

before the first train can arrive here from the city of New York, when persons cannot go home and return unless they take the "owl train" to get here, I think it is premature, unwise and unfair, and I think I might say petty. It is very small indeed early on Monday morning to call the roll and insist on members being here early in the morning. It is impossible for some of them to get here; and if Judge Strong, for instance, had gone home to spend the Sabbath it would have been impossible for him to get back here this morning; and so with other members, if they went home it would be impossible for them to get here. I know of members who have been called home to attend the sick bed of relatives, and one, Mr. Develin, for instance, who has been called to attend the death-bed of the Rev. Dr. Ives; and there are other instances; I myself would not object to being fined if I was away in the middle of the week, but certainly I should object if I was fined on the roll being called early on Monday morning. I just got here this morning by the skin of my teeth. All we want to show is, that there is certainly a desire on the part of the members of this Convention to do some business, if they have a quorum here, but there is no necessity for calling the Convention so early on Monday morning. I do not think any good will arise from it.

Mr. ALVORD—The gentleman from Kings [Mr. Schumaker], says the gentleman from Onondaga [Mr. Alvord] would like to go home and spend the Sabbath. I will ask the gentleman to look at the record of this Convention, and see if he can find whether the gentleman from Onondaga [Mr. Alvord], has been absent on one single day, if he has not been here each and every day the Convention has set, and has not answered to the roll call every time.

Mr. SCHUMAKER—Where do you attend church on the Sabbath?

Mr. ALVORD—At home, sometimes.

Mr. SCHUMAKER—I am very glad to hear it.

Mr. ALVORD—Sometimes I go home on Sunday, and every time I go home I leave here at six o'clock in the evening on Saturday and leave home again at twelve o'clock the evening of Sunday and get here in time to perform my duties as a member of this Convention, and if I was unable to do that I should stay here in the city of Albany to be ready to come here and attend to my duties as a member of the Convention when Monday morning session opened. It virtually resolves itself into this: that, under the pretense of men living on the Hudson river down below here, it is necessary for them, above all other portions of the people of the State to go home on Sunday, while we from the country are compelled to come here and have only four days' session in the week. I want those gentlemen to do what is fair and right. If they have got the power and strength, let them come into this Convention, and pass a resolution to resolve that in this Convention there will be four sessions each week, from the beginning to the end of it, and yet pretend to put their hands into the treasury of this State, and take pay for seven days' work instead of four. That is what I am in favor of. There is not a single one of those men who has not persistently

absented himself from his duties every Thursday or Friday up to the succeeding Monday or Tuesday morning; but every one of them go to the paymaster and get their pay for the entire amount of the time in which they have pretended thus to exercise their power and use their time in favor of the interests of the State. I am opposed to anything of this kind. Let them say that their duties here as members of the Convention are such that they necessarily can be performed in four days, and let them so put it in the record, and let us act understandingly in regard to the matter in the future. I wish to say in answer to the gentleman from Albany [Mr. A. J. Parker], who, I understand, says that two of his colleagues are not present on account of illness—there is no difficulty about it whatever when the time shall come for these gentlemen to appear before the bar of this Convention, and having expressed themselves in that direction, that illness has kept them away, all idea of contempt is wiped away from them.

Mr. A. J. PARKER—I will say they are utterly unable to come here.

Mr. ALVORD—I understand that. The sergeant-at-arms will report that to the Convention and that will be their excuse. I will answer the gentleman in that regard, that if they are unable to be here, and are detained by illness, that they will be excused in consequence of their absence, and they would not be compelled to be brought here on a litter even.

Mr. A. J. PARKER—I was perfectly aware of that before.

Mr. ALVORD—Then it is no reason why this call should be suspended, because they are not placed in any danger whatever by the operation of the call. Another thing, the gentleman from Kings [Mr. Schumaker] mentions the case of the honorable gentleman from New York, Mr. Develin. Mr. Develin went away from here early last week, and he could have risen up in his place before this Convention and stated the reason for his absence and been excused.

Mr. SCHUMAKER—He asked me to do that for him, but I went away too.

Mr. ALVORD—Then all I have to say in regard to that matter is, that if the gentleman from Kings [Mr. Schumaker] absented himself from his duties in this Convention he did wrong to this Convention; and if he failed to do that which his friend desired him to do, then he did wrong to his friend, and he should not get up, having committed a wrong in his own person, and ask us to permit others who have been recreant to their duty, to get away without just punishment for their misdeeds. It strikes me there is no sort of difficulty whatever in carrying this call to its completion, by remaining in session a short time longer, and about twelve o'clock, or a little thereafter, there comes up a train from the city of New York, in which those gentlemen who do not desire to ride in the "owl" train or in the midnight train, which we men in the western part of the State have to do, will be enabled, and will have an opportunity, if they get up early enough, to get here in time to make a quorum of this Convention and when they have done so, we can put on record those who have absented themselves from



four days per week? If a decision should be against this call, and thus it should be the judgment of this Convention that those absenting themselves regularly one-third of the time are right, I shall in the future conform my own arrangements to that decision. It is as inconvenient to me as it is to those gentlemen who are absent, to remain away from home the whole time; and if this Convention shall defeat this call, and say that this practice is justifiable, and indeed commendable, I see no reason why a part of this Convention should be held during the whole week, when by the action of the majority of the members of this Convention the business of the Convention is not proceeded with. Especially when by a motion of the gentleman from Oneida [Mr. T. W. Dwight], it was determined with a view to the convenience of the members that this matter should be compromised by an arrangement giving every other week to go home; it seems to me extraordinary that we see this array of empty seats this morning. I shall, therefore, vote for this call, and I will at some inconvenience remain to the end of it with a view of testing the question which I think is really involved on the motion now pending, whether this Convention will hold sessions four days of the week instead of six.

Mr. MERRILL — I would like to know if it is in order to move the previous question.

The PRESIDENT *pro tem.* — The Chair would inform the gentleman that it is in order.

Mr. MERRILL — Then I move the previous question.

The question was put on the motion of Mr. Merrill, and it was declared carried.

The question then recurred on the motion of Mr. Barker, on which the ayes and noes were called.

A sufficient number having seconded the call, the ayes and noes were ordered, and the motion was declared carried by the following vote.

*Ayes*—Messrs. A. F. Allen, N. M. Allen, Alvord, Barker, Bell, Bickford, Bowen, Case, Champlain, Clinton, Cooke, C. C. Dwight, T. W. Dwight, Ely, Flagler, Folger, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Merrill, Merritt, Rathbun, Root, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Van Campen, Wakeman, Wales—38.

*Noes*—Messrs. Andrews, Baker, Ballard, E. A. Brown, W. C. Brown, Chesebro, Clark, Conger, Corning, Daly, Duganne, Field, Fuller, Hale, Harria, Ketcham, Krum, Ludington, Mattice, Merwin, Opdyke, A. J. Parker, C. E. Parker, Pond, Prosser, Schell, Schumaker, Seymour, Silvester, Strong, Tappen, S. Townsend, Van Cott—33.

Mr. SILVESTER — Is it in order to ask leave of absence for Mr. Carpenter?

The PRESIDENT *pro tem.* — It is not now in order.

The sergeant-at-arms was directed to clear the galleries and lobbies and to close the doors, and see that no member was allowed to come in or go out.

Mr. FLAGLER — I wish to ask leave of absence—

The PRESIDENT *pro tem.* — The Chair will inform the gentleman that no leave of absence or

excuse can be granted unless there is a quorum present.

Mr. TAPPEN — I rise to ask if it would be in order to suspend the call of the Convention.

The PRESIDENT *pro tem.* — The Chair is of the opinion that it will.

Mr. ALVORD — I ask what, in the opinion of the Chair, would be the result of it, whether the suspension of the call of the Convention under the present circumstances does not result in our being without a quorum again, and consequently from that suspension we would have to forego the call entirely? If the gentleman from Westchester [Mr. Tappen] desires after we have gone so far, to go no farther, he is right in moving to suspend the call.

The PRESIDENT *pro tem.* — The Chair is of the opinion, if the motion for suspension is carried, it makes all proceedings under the call nugatory.

Mr. TAPPEN — What I desired was to make this call at a time when it would be likely to have some effect. No call of the Convention can possibly bring a quorum present until the arrival of the morning train, and my object was to suspend these proceedings until the latter part of the day, when we can get a sufficient number to make a quorum. The call of the Convention can only be effectual when, as is the case in Washington or Albany, the sergeant-at-arms can procure enough from the city precincts to form a quorum, otherwise the call of the House would produce no permanent results. However, in deference to the request of certain gentlemen, I will withdraw my motion.

Mr. A. J. PARKER — I think it my duty to renew the motion. In regard to two of my colleagues who are absent, I know they are now ill and have been for several days. If we move this call, we cannot get a quorum in the city, and to send to New York for members would take more than the entire day. I make this motion because I am satisfied we cannot obtain a quorum by going on with the call. There are no delegates in town who can be found to come in and make a quorum, and to send to New York or distant parts of the State would occupy the entire day. We can gain nothing by doing so, we will lose our whole time and gain nothing. I hope those present will conclude to consent to suspend this call and I make this motion.

Mr. SCHUMAKER — I hope that motion will prevail. My friend from Onondaga [Mr. Alvord], contrary to his usual amiability, is pressing this matter I think a little too far. I think Monday morning is a little too early for a call of the House. I think the delegates ought to be permitted to go home and spend the Sabbath with their families, and if this call should be made in the middle of the week, it might very well be made and could be made with a great deal more propriety. But we must expect members to go home, in fact they will go home and spend the Sabbath. I intend to go home and spend the Sabbath if it is possible for me to do so, and I know the gentleman from Onondaga [Mr. Alvord] intends to go home and spend the Sabbath; but if members are found absent in the middle of the week, it may be well enough to call the roll, and fine those who are not here; but early on Monday morning,

before the first train can arrive here from the city of New York, when persons cannot go home and return unless they take the "owl train" to get here, I think it is premature, unwise and unfair, and I think I might say petty. It is very small indeed early on Monday morning to call the roll and insist on members being here early in the morning. It is impossible for some of them to get here; and if Judge Strong, for instance, had gone home to spend the Sabbath it would have been impossible for him to get back here this morning; and so with other members, if they went home it would be impossible for them to get here. I know of members who have been called home to attend the sick bed of relatives, and one, Mr. Develin, for instance, who has been called to attend the death-bed of the Rev. Dr. Ives; and there are other instances; I myself would not object to being fined if I was away in the middle of the week, but certainly I should object if I was fined on the roll being called early on Monday morning. I just got here this morning by the skin of my teeth. All we want to show is, that there is certainly a desire on the part of the members of this Convention to do some business, if they have a quorum here, but there is no necessity for calling the Convention so early on Monday morning. I do not think any good will arise from it.

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absented himself from his duties every Thursday or Friday up to the succeeding Monday or Tuesday morning; but every one of them go to the paymaster and get their pay for the entire amount of the time in which they have pretended thus to exercise their power and use their time in favor of the interests of the State. I am opposed to anything of this kind. Let them say that their duties here as members of the Convention are such that they necessarily can be performed in four days, and let them so put it in the record, and let us act understandingly in regard to the matter in the future. I wish to say in answer to the gentleman from Albany [Mr. A. J. Parker], who, I understand, says that two of his colleagues are not present on account of illness—there is no difficulty about it whatever when the time shall come for these gentlemen to appear before the bar of this Convention, and having expressed themselves in that direction, that illness has kept them away, all idea of contempt is wiped away from them.

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the duties of this Convention, and we can go on with our ordinary business, dissolving the call. Something has been said about the fact (I believe by my friend from Kings) [Mr. Van Cott] that we went on to excuse some gentlemen on Friday and Saturday, from their attendance, and he said that if we had not excused them we would have had a quorum. Those gentlemen performed a duty they owed to the Convention, in getting up in their places and giving reasons, and asking to be excused from attendance. They were only about thirty in number, but there are about eighty gentlemen who have absented themselves from their duties in this Convention without any excuse whatever, and without even asking—they have not condescended to do that much—to get up and say for their business or pleasure, or the sickness of their friends, or on account of any inability, physical or otherwise, they are unable to perform their duties here which caused them to retire from the Convention, and therefore they ask leave to be excused. Those thirty men who were excused performed their duty, and the balance have not performed their duty. I hold it to be the duty of every member of this Convention, whether we shall be left without a quorum or not, if he intends to absent himself from his duties in the Convention, that he should, either through his own act or the act of his friends, ask the permission of this Convention thus to absent himself. In the neighboring State of Michigan they have a Constitutional Convention now in session. They have adopted a rule which we ought to have adopted in the first instance. There the roll is called every day upon the meeting of the Convention, and gentlemen are compelled to answer to their names or to be excused, and if not answering then they are, under the rule of the Convention, in contempt of the Convention. If we had had such a wise and salutary rule in the first instance there would be no difficulty whatever, and we would have had a quorum during every day of our proceedings. Another thing, the gentleman from Kings [Mr. Schumaker] says he is in favor of a call in the middle of the week. It may be the gentleman from Kings [Mr. Schumaker] absents himself in the middle of the week, but it is none the less true that from Tuesday morning until about Friday at one o'clock, there is no necessity for a call of the Convention, unless it is necessary to bring the great genius, and eloquence, and intelligence, of the gentleman from Kings [Mr. Schumaker] back into the Convention, in order that we may carry on our business better, and have better articles to place before the people, for there are more than eighty-one of us then here, although we have not the same transcendental ability of the gentlemen who see fit to absent themselves in the middle of the week, to aid us in our deliberations. There is no necessity whatever for a call in the middle of the week, for we have the power in the Convention to go on with our business. Now let me say another thing. On Saturday last we had the interesting matter of the organization of the Legislature up for consideration. Gentlemen had spoken, and I believe I have the record of the Secretary to bear me out in saying that thirty-nine speeches have been made on this subject, varying

from twelve to twenty minutes in duration. The entire speaking talent of the few gentlemen who were left in the body of the Convention was exhausted, but in consequence of the absence of a large portion of the Convention, some seventy, I believe at that time, or almost eighty, and by the great hardship it would be to those gentlemen who have thus absented themselves, that they could not make thirty-nine other speeches, and give thirty-nine other reasons why they should go this way or that way, we here, who had thus exhausted all our brains in the argument of the question, kindly and considerately agreed that we would put that question over in order to give those gentlemen time to come here and re-hash this whole matter before us, and so it will be from week's end to week's end, and here we have been frittering away the time of this Convention down to this moment, with the most important matters yet to come before us, which should require at our hands a full and large discussion, and we have only a few more weeks remaining between us and the ides of November. If it is the persistent opinion, and if it is the persistent intention, of many men in this Convention that nothing shall be done, that there shall be nothing perfected, or so illy perfected that it will assuredly meet the opposition of the people at the polls, in regard to our work and labor here, they are taking the right course, they are taking just exactly the course to carry out their views and their conclusions to their legitimate end, but if they do really and honestly mean that we shall perfect a reformed Constitution here, such as in our opinion shall commend itself to the people, and they desire, after that shall have been done, that we shall go up to the people and endeavor to also effect the people in that regard to their better interests in the future, we have got work to do, the responsibility of which we should no longer shirk, and the time for the performance of which we should husband, under the circumstances, with almost miserly care, and it is for this reason, among the other reasons which I have given, that I do, for one, desire that this call shall be pushed to its legitimate conclusion. I know, as well as any man knows, that the simple amount of the pecuniary fines that we might impose on these men, the fact that you make them come up before the body of this Convention and give their excuses, might not operate to affect them in the future, in regard to their attendance here; but, sir, the fact that there is a press in this country, the fact that the people, throughout the length and breadth of the State, are already looking with suspicion upon the acts of men with regard to this Constitution, the fact that the people demand of us, their servants, that we should work and labor, we having been chosen and appointed for that purpose, and the fact that you will get back from the press, throughout the length and breadth of the State, their disapprobation of the course they have pursued here will induce those men, as they should, to come up to the point in the future and do their work as they ought to do it. The idea which has been propounded, that at the end of last week men had not made their arrangements to get back here, that they had



before the first train can arrive here from the city of New York, when persons cannot go home and return unless they take the "owl train" to get here, I think it is premature, unwise and unfair, and I think I might say petty. It is very small indeed early on Monday morning to call the roll and insist on members being here early in the morning. It is impossible for some of them to get here; and if Judge Strong, for instance, had gone home to spend the Sabbath it would have been impossible for him to get back here this morning; and so with other members, if they went home it would be impossible for them to get here. I know of members who have been called home to attend the sick bed of relatives, and one, Mr. Develin, for instance, who has been called to attend the death-bed of the Rev. Dr. Ives; and there are other instances; I myself would not object to being fined if I was away in the middle of the week, but certainly I should object if I was fined on the roll being called early on Monday morning. I just got here this morning by the skin of my teeth. All we want to show is, that there is certainly a desire on the part of the members of this Convention to do some business, if they have a quorum here, but there is no necessity for calling the Convention so early on Monday morning. I do not think any good will arise from it.

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Mr. SCHUMAKER—I am very glad to hear it.

Mr. ALVORD—Sometimes I go home on Sunday, and every time I go home I leave here at six o'clock in the evening on Saturday and leave home again at twelve o'clock the evening of Sunday and get here in time to perform my duties as a member of this Convention, and if I was unable to do that I should stay here in the city of Albany to be ready to come here and attend to my duties as a member of the Convention when Monday morning session opened. It virtually resolves itself into this: that, under the pretense of men living on the Hudson river down below here, it is necessary for them, above all other portions of the people of the State to go home on Sunday, while we from the country are compelled to come here and have only four days' session in the week. I want those gentlemen to do what is fair and right. If they have got the power and strength, let them come into this Convention, and pass a resolution to resolve that in this Convention there will be four sessions each week, from the beginning to the end of it, and yet pretend to put their hands into the treasury of this State, and take pay for seven days' work instead of four. That is what I am in favor of. There is not a single one of those men who has not persistently

absented himself from his duties every Thursday or Friday up to the succeeding Monday or Tuesday morning; but every one of them go to the paymaster and get their pay for the entire amount of the time in which they have pretended thus to exercise their power and use their time in favor of the interests of the State. I am opposed to anything of this kind. Let them say that their duties here as members of the Convention are such that they necessarily can be performed in four days, and let them so put it in the record, and let us act understandingly in regard to the matter in the future. I wish to say in answer to the gentleman from Albany [Mr. A. J. Parker], who, I understand, says that two of his colleagues are not present on account of illness—there is no difficulty about it whatever when the time shall come for these gentlemen to appear before the bar of this Convention, and having expressed themselves in that direction, that illness has kept them away, all idea of contempt is wiped away from them.

Mr. A. J. PARKER—I will say they are utterly unable to come here.

Mr. ALVORD—I understand that. The sergeant-at-arms will report that to the Convention and that will be their excuse. I will answer the gentleman in that regard, that if they are unable to be here, and are detained by illness, that they will be excused in consequence of their absence, and they would not be compelled to be brought here on a litter even.

Mr. A. J. PARKER—I was perfectly aware of that before.

Mr. ALVORD—Then it is no reason why this call should be suspended, because they are not placed in any danger whatever by the operation of the call. Another thing, the gentleman from Kings [Mr. Schumaker] mentions the case of the honorable gentleman from New York, Mr. Develin. Mr. Develin went away from here early last week, and he could have risen up in his place before this Convention and stated the reason for his absence and been excused.

Mr. SCHUMAKER—He asked me to do that for him, but I went away too.

Mr. ALVORD—Then all I have to say in regard to that matter is, that if the gentleman from Kings [Mr. Schumaker] absented himself from his duties in this Convention he did wrong to this Convention; and if he failed to do that which his friend desired him to do, then he did wrong to his friend, and he should not get up, having committed a wrong in his own person, and ask us to permit others who have been recreant to their duty, to get away without just punishment for their misdeeds. It strikes me there is no sort of difficulty whatever in carrying this call to its completion, by remaining in session a short time longer, and about twelve o'clock, or a little thereafter, there comes up a train from the city of New York, in which those gentlemen who do not desire to ride in the "owl" train or in the midnight train, which we men in the western part of the State have to do, will be enabled, and will have an opportunity, if they get up early enough, to get here in time to make a quorum of this Convention and when they have done so, we can put on record those who have absented themselves from

is competent on the part of the Convention now present here to excuse portions of those gentlemen, if they see fit to.

The PRESIDENT *pro tem.* — That is the opinion of the Chair.

Mr. ALVORD — I then ask consent to withdraw my motion.

The resolution was withdrawn.

Mr. ALVORD — I ask that the President of this Convention — whom we all know went away from here very ill and who has also written here that he continues to be quite ill, but is slowly recovering and if possible will be with us to-morrow morning — be excused for his non-attendance this morning.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. A. J. PARKER — I ask that Mr. Cassidy and Mr. Roy be excused, for I know they are both ill and unable to attend. They have been detained for a number of days. I have seen Mr. Cassidy myself, and I know that he is sick, and I ask, therefore, that he be excused.

The question was put on excusing Mr. Cassidy, and it was declared carried.

The question was put on excusing Mr. Roy, and it was declared carried.

Mr. T. W. DWIGHT — I ask an excuse for Mr. Livingston, of Kings county. He was called away to attend to the distribution of some trust funds, which it was necessary to send out by the Saturday's steamer to Europe, and asked me to apply for an excuse for him.

Mr. ALVORD — I hope that will not obtain, because if it was to be sent out by the Saturday's steamer, that steamer has already gone.

The PRESIDENT *pro tem.* — The Chair will inform the gentleman that Mr. Livingston is absent on leave.

Mr. SCHUMAKER — I move that Mr. Develin be purged of contempt. I neglected to make Mr. Develin's excuse in time, but he exhibited, I think, to the President, a telegram showing that Dr. Ives was sick, and I move that Mr. Develin be purged of contempt.

Mr. BICKFORD — I want to know whether he was a relative of Mr. Develin?

Mr. SCHUMAKER — Suppose you telegraph to find out. I was shown a telegram from a gentleman to Mr. Develin, which read this way: "Your friend, Dr. Ives, is dying." I suppose if a man leaves this Convention to attend the bedside of his dying friend, he can be excused. That is all I have to say. Whether he is a full-blooded cousin or not, I do not know.

Mr. DALY — I beg leave to say on that subject that Mr. Develin, to my personal knowledge, is a very intimate personal friend of the gentleman who is lying on his death bed, and I hope this Convention will consider that particular case a sufficient reason why he should be excused.

The question was put on excusing Mr. Develin, and it was declared carried.

Mr. LUDINGTON — I ask that my colleague, Mr. Houston, may be purged of the contempt that he may be in. It is well known that few delegates of this Convention have been more punctual in this Convention than he. I know he has a wife in very ill health, so much so that he, at a

great deal of sacrifice, has made it a point to visit his home every week during the sessions of this Convention, and I know it must be in consequence of her illness that he is not here at this hour, and for that reason I ask that he be excused.

The question was put on excusing Mr. Houston, and it was declared carried.

Mr. SILVESTER — I ask that Mr. Carpenter, of Dutchess, be excused. He is a United States Assessor of that district, and his official business rendered it necessary for him to go home on Saturday last. He will undoubtedly be here on the first train that can reach here, and for that reason I ask that he be excused.

Mr. ALVORD — I hope he will not be excused if he is a United States Assessor. He has no business to take his position here as a member of the Convention without understanding he was to perform certain duties. He cannot serve two masters.

Mr. SILVESTER — I do not know that he has attempted to serve two masters. He has endeavored to do his duty here, and he left here on Saturday, expecting to be here by the first train this morning, and will undoubtedly be here; and he had no idea probably, like other members here, that any call of the house would be made at so early an hour in the morning, especially as we meet at ten o'clock instead of eleven.

Mr. KETCHAM — I rise to a question of order, that we cannot hear anything for the dumping of coal in the cellar, and I hope the dumping of the coal in the cellar will be suspended.

Mr. HALE — I would say in behalf of Mr. Carpenter, that few members have been more constant in their attendance on this body than he has, and I have no doubt his absence is necessary at this time.

The question was put on excusing Mr. Carpenter, and it was declared carried, on a division, by a vote of 30 to 24.

Mr. GREELEY — I desire to say in behalf of Mr. Martin I. Townsend that he left this city at the close of our session on Saturday to visit a relative in the town of Great Barrington, and he certainly will be as early as he can be in his place, I suppose at one o'clock. I know he intended to return as soon as possible, and I think it ought to be known why he is absent.

Mr. ALVORD — Do I understand the gentleman as saying that he is absent on a visit?

Mr. GREELEY — He went to see a relative.

Mr. SEYMOUR — I wish to say in connection with the absence of Mr. Townsend, that I know he intended to be here on this day as soon as he can arrive. I know that he went to see a relative, a member of the family who was taken to the country on account of ill health. I move that he be excused.

Mr. C. C. DWIGHT — I wish to make a motion. We have, as I understand, voted to excuse Mr. Carpenter of Dutchess for, as I conceive, no excuse whatever, and no pretense or excuse — simply that he was absent, and it was conjectured he might be away on important business; and I think, after that, we cannot refuse to excuse any member, and I move, therefore, that all members who under this call would be in contempt, shall be excused.

gone away with the expectation that there would be no enforcement of the resolution which they themselves deliberately agreed to and passed on Friday last, is all the merest nonsense in the world. These men have again and again and again gone away, and they will do it till the very last end of the sessions of this Convention, unless we determine clearly and unmistakably by our action, that what they have been doing is wrong, and we shall hold them up to the disapprobation of the people of this State.

Mr. CORNING—I do not rise, sir, to make a speech, but simply, if it be in order, to move that the call be suspended, and upon that I ask the previous question.

The question was then put on ordering the previous question, and, on a division, it was declared carried by a vote of twenty-eight to sixteen.

The PRESIDENT *pro tem.* announced the question to be on the motion to suspend the call of the Convention.

Mr. LAPHAM—Is that motion in order?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is.

Mr. LAPHAM—The Convention has just taken a vote on the same subject.

The PRESIDENT *pro tem.*—But some business has taken place since. The galleries have been cleared and the roll has been called.

The ayes and noes were called for on the motion to suspend the call of the Convention. A sufficient number having seconded the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Corning, and it was declared lost.

Mr. MERRILL—I move that the call of the absentees be proceeded with, to find out who are absent. I desire to inquire whether it would be within the province of those present to pass a resolution putting absent members in contempt before we obtain a quorum.

The PRESIDENT *pro tem.*—The Chair is of the opinion that as soon as a quorum is obtained the Convention can make some special direction.

Mr. MERRITT—If my memory serves me, a full Convention gave authority to the minority, in case a call was made, to impose all the penalties that would be imposed by the full Convention, and I would ask whether that could be done?

The PRESIDENT *pro tem.*—There was such a resolution offered, but the Chair is not aware that it was adopted.

Mr. LAPHAM—I call the attention of the Chair to the thirty-fourth rule. The whole subject is regulated by that rule. It gives to the members present full power.

The SECRETARY proceeded with the call of the absentees.

Mr. BICKFORD—I would like to know whether the call of the absentees includes all that are absent, or only those who are absent without leave.

The PRESIDENT *pro tem.*—Only those absent without leave.

The SECRETARY proceeded to call the names of the absentees, and the following gentlemen were found to be absent:

Messrs. C. L. Allen, Archer, Armstrong, Axtell, Beadle, Beals, Burrill, Carpenter, Cassidy, Cheri-

tree, Cochran, Colahan, Comstock, Corbett, Develin, Eddy, Everts, Farnum, Fowler, Francis, Frank, Fullerton, Garvin, Gerry, Gross, Hardenburgh, Hiscock, Houston, Huntington-Hutchins, Jarvis, Kernan, Larremore, Law, A. R. Lawrence, Lee, Lowrey, Magee, Mastep, McDouald, Mouell, Morris, Murphy, Nelson, Paige, President, Robertson, Rogers, Rolfe, Roy, A. D. Russell, Schoonmaker, Sheldon, Sherman, Stratton, Tilden, M. I. Townsend, Tucker, Weed, Wickham, Williams, Young—62.

Mr. ALVORD—I move that the warrant of this Convention, signed by the President, be issued to the sergeant-at-arms, with instructions to proceed within the limits of this city and endeavor to get enough to make a quorum.

Mr. KRUM—I move to amend by striking out the city of Albany and inserting the city and State of New York.

Mr. SEYMOUR—I wish to inquire whether any excuse can now be received.

The PRESIDENT *pro tem.*—The Chair is of the opinion that an excuse may be received.

Mr. SEYMOUR—I hope the President will not order the issuing of the warrant until we shall hear excuses by some members present in regard to some members who are absent.

Mr. LAPHAM—I propose an amendment to the resolution, that the members absent on this call without leave forfeit their pay for the day, unless a satisfactory excuse be given.

The PRESIDENT *pro tem.*—The Chair is of the opinion that that cannot be entertained, inasmuch as there is no quorum present. The Chair construes rule 34 differently from the gentleman from Ontario [Mr. Lapham], to wit: that it only in the first instance empowers the minority to secure a quorum.

Mr. LAPHAM—Rule 34 is as follows: "In cases of the absence of a quorum at any session of the Convention, the members present may take such measures as they may deem necessary to secure the presence of a quorum, and may inflict such censure as they may deem just on those who, on being called on for that purpose, shall render no sufficient excuse for their absence."

The PRESIDENT *pro tem.*—Censure can be inflicted only on those who, *being called on*, render no sufficient excuse. They must first be brought in before they can be called on for an excuse.

Mr. DALY—I hope this motion will not prevail.

The PRESIDENT *pro tem.*—The Chair rules it out of order.

Mr. SEYMOUR—I move, as an amendment to the amendment which has just been proposed, the following exceptions: "Except as to members absent for whom excuses satisfactory to the Convention shall be given."

Mr. ALVORD—With the consent of the gentleman from Schoharie [Mr. Krum], who has amended my proposition, and for the purpose, as I understand the President to rule, if there are any who, within the knowledge of members, should be excused, I will withdraw it for the purpose of having such excuses offered for those who shall be excused before the warrant is issued. I understand the President to say that now these gentlemen, being in contempt *prima facie*, &



fact could have been made, except by way of an excuse for the gentleman from Rensselaer [Mr. M. I. Townsend], and I should like to know whether any member of this Convention will grant an excuse upon such grounds.

Mr. SILVESTER—I hope the motion of the gentleman from Cayuga [Mr. C. C. Dwight] may prevail, and I think, especially under the circumstances this morning, it would be eminently proper that we should grant universal amnesty in this case.

Mr. FULLER—I hope the motion of the gentleman from Cayuga [Mr. C. C. Dwight] will not prevail. I was not in favor of continuing this call; I did not think it was best; but having begun it, I think we are bound to go through with it. I would not make boy's play of this business, but having commenced, we should carry it through and make it effectual.

Mr. S. TOWNSEND—I understand that the gentleman from Rensselaer [Mr. M. I. Townsend] has gone to visit a relative who was sick, and I understand the gentleman from Cayuga [Mr. C. C. Dwight] to say that was no good reason. I think that is a very good reason, and somewhat analogous to the case of the gentleman from New York [Mr. Develin] who was excused upon that ground.

Mr. SEYMOUR—I would state in relation to Mr. Townsend, that he went away on Saturday, after the close of our session, to visit a member of his family, a relative who was taken into the country on account of ill health under the advice of a physician, and I know he has gone to visit that person.

Mr. ALVORD—I would like to know how far it is to Berkshire county? Looking around me I see a number of others from the gentleman's county who are absent, and I would inquire if he can make excuses for them.

Mr. SEYMOUR—I will state to the gentleman from Onondaga [Mr. Alvord], that when the case of my other colleagues comes up, I will be prepared, if they have any good excuse to present it to the Convention; but I desired to state this in reference to Mr. Townsend, as I believe he has a good excuse.

Mr. OPDYKE—I hope the motion of the gentleman from Cayuga [Mr. C. C. Dwight] will prevail. I voted against entering upon this call in the conviction that it would do no good, and only waste our time; but a majority of the Convention differed from me in judgment, and I have no doubt they considered the subject more wisely than I did; and now, having commenced the call, it seems to me if we stop here it will be trifling, and show an infirmity of purpose and a vacillation on the part of the Convention which would not redound to its credit, and I hope it will be persisted in.

Mr. C. C. DWIGHT—I made this motion because I thought I saw in the precedent which had been set by the Convention, a disposition to excuse everybody, with or without an excuse; but I see now a gratifying intention on the part of members to take another course, and I therefore withdraw the motion I made.

The question was then put on excusing Mr. M. I. Townsend, and it was declared carried, on a division, by a vote of 33 to 22.

Mr. HALE—I move that this call be suspended until half-past seven o'clock this evening.

Mr. ALVORD—I rise to a point of order, that if the call is suspended until half-past seven o'clock, it is suspended entirely.

The PRESIDENT *pro tem.*—The Chair is of that opinion.

Mr. ALVORD—And, therefore, no motion can be entertained except to suspend the call.

Mr. HALE—I will withdraw the motion.

Mr. ROOT—I ask that Mr. Lee be excused. He received a telegram that a member of his family was very ill and he must return home.

The PRESIDENT *pro tem.*—The Chair would state to the Convention that he saw Mr. Lee on his way to the cars, and he informed him he had just received a telegram saying that his brother-in-law was dead.

The question was then put upon excusing Mr. Lee, and it was declared carried.

Mr. TAPPEN—I move Mr. Cochran be excused. He has been a most attentive member of this Convention, having been present every day from the 4th of June, and not absent a single day, and it would be unjust to him, considering his prompt and faithful attendance, for this Convention to now say that he is willfully absent.

Mr. MERRITT—I would like to ask the gentleman whether his colleague is not now in this city? I am so informed.

Mr. TAPPEN—I say that from some unforeseen cause he is not in his seat this morning.

Mr. HARRIS—I did not desire to take any part in this farce, but I will state for the information of the Convention that Mr. Cochran is at the door. He arrived just too late to get in and is waiting to be admitted whenever the Convention shall see fit to receive him.

Mr. POND—I move that the absentees who have not been excused be excused—in other words, I wish to renew the motion of the gentleman from Cayuga [Mr. C. C. Dwight], and in support of that motion I will say as several gentlemen here have said they opposed the original motion for the call; but since it was carried they have changed their minds and are now in favor of enforcing a call of the house. I can say that I opposed the original motion for a call and I still am of the opinion that it is better now to suspend it and better to take the back track just as quick as we can and thus extricate ourselves from the difficulty we are now in. I think, sir, it is unwise and improper to make this call of the Convention on Monday morning and at this hour. I do not believe it is right exactly to hold members of this Convention to such a rigid rule that they shall stay in the city of Albany over Sunday, when they can by the facilities afforded by the public means of conveyance go home and spend the Sunday at home, and arrive here on Monday at such a time as will not prevent a session on the evening of that day. I think we ought to allow to members of this Convention that privilege, and I disagree entirely with my friend from Onondaga [Mr. Alvord] who wants to hold to such a rigid rule as to make a call of this Convention so early Monday morning and to put every member in contempt who is not here. I think my friend is a little too rigid, because he has heretofore been in

Mr. ALVORD—I ask the ayes and noes on that question.

Mr. DALY—There are several gentlemen of the New York delegation who are detained, to my knowledge, by important business, but I do not feel justified in asking for their excuse for that reason. I have had some experience in past years of the effect of a motion of this kind, and my objection to it is, that it fails in obtaining the object aimed at. I entertain quite as earnestly as the other gentlemen in this Convention the desire that such measures should be taken as will secure the attendance of members, but the practical effect of a call of the House can extend no further than the territorial limits of this city. As has been already suggested, to send the sergeant-at-arms all over the State would be followed by no other result, but that of compelling the members to remain in the position they are now in until the officer returns. There is also this additional consideration. It has never yet been determined that a body of this character has the power to order an arrest at all. In my opinion it has, but the existence of any such power has been doubted by very good lawyers. I would add the still further consideration that this is at a season of the year when most persons are at leisure. Our duties during the discussion upon the suffrage question were exceedingly arduous—I speak of my own personal experience. We attended here for four days in the week, and we went into committee at nine o'clock in the morning and then attended three sessions of this body extending to nine o'clock in the evening, an amount of physical labor exceedingly severe, and much more than is usual for the discharge of any ordinary public duty, and it is very natural that gentlemen should desire to get away for the short recreation, which will be afforded by casual visits to their homes during a part of Saturday and the whole of Sunday. I supposed when the hour was fixed at one o'clock for adjournment, it was with a view of enabling gentlemen to leave early, and it will be but reasonable to allow sufficient time for them to return without compelling them to travel upon the Sabbath. In my judgment, a much more effectual and moral means of securing the attendance of members, would be to publish in the newspapers, on occasions like this, the names of members who are absent upon the call of the roll, and this would have some effect. My objection to this motion is that it is not practicable—that it will not accomplish the purpose which it is intended to effect. I therefore, as the result of the motion already passed upon has shown an unwillingness on the part of the Convention to suspend the call, shall support the motion of the gentleman from Cayuga [Mr. C. C. Dwight], that all persons absent be excused. I think when we propose, hereafter, to have a call of the Convention, we should fix our meeting on Monday at such a time as will allow those who leave on Saturday a reasonable time to return.

Mr. GREELEY—From the city of New York, there are two modes of reaching this place every Sunday evening. You can start by boat at six P. M. or by a train—which has good sleeping-cars attached—at eleven P. M., and arrive here by

seven o'clock in the morning. The larger portion of the absentees are from that end of the State. If this Convention chooses to give up the Monday session, very well. If it chooses to make a later hour of meeting on that day, very well. But to abandon this proceeding now is to publish to the State that we do not care whether members are here or not, but that they can take their pay, go off and practice law, or sit as judges in court, or act as commissioners or collectors of internal revenue, and come back here whenever it is convenient, and not (as they think) inconsistent with their duties elsewhere. It does seem to me that if we abandon this proceeding now we abandon all hope of keeping a quorum here, except when it shall suit the convenience of members, and I therefore hope that this Convention will not abandon this call, upon which we have entered, but will carry it out to some practical result.

Mr. TAPPEN—I shall have, sir, to take very high moral grounds in responding to the gentleman from Westchester [Mr. Greeley]. He says that gentlemen can leave the city of New York on Sunday evening, and arrive here Monday morning. Well, sir, the Sabbath does not terminate so early in the day, and I do not like to compel my associates who reside in that or any other portion of the State to violate their moral feelings and conscientiousness to travel upon the Sabbath in order to reach the city on the Monday following. With regard to some remarks which have been made in this chamber by other gentlemen, it seems to be desired to fix upon the public mind the idea that all the absentees come from that part of the State where the county of Kings and the city of New York are located. In looking around this chamber, sir, I see vacant seats whose usual occupants are from all parts of the State. I have in my mind's eye particularly the case of one gentleman who I think had taken a house in the city of Albany, and who had been here every day from the 4th of June to this time, even staying in the city with his family during the recess early in July, but from some unforeseen cause he is absent this morning; and I think it would be a piece of injustice in regard to him as well as to others to vote upon them the censure of this Convention. I trust this motion will prevail, and that all will be excused, but if it does not prevail I hope that this Convention will excuse my colleague from Westchester [Mr. Cochran], whose punctual attendance must have been noticed by every member of this body.

Mr. C. C. DWIGHT—I was surprised to hear the gentleman from Westchester [Mr. Greeley] oppose the motion which I had the honor to make, when but a few moments before he asked for an excuse for a very distinguished member of this Convention upon no other ground than that he had left this city suddenly last week for the purpose of making a visit to a relation in the county of Berkshire in the State of Massachusetts.

Mr. GREELEY—I beg to correct the gentleman. I did not ask for an excuse, I simply stated the fact.

The PRESIDENT *pro tem.*—The gentleman from Westchester expressly said he merely stated the fact.

Mr. C. C. DWIGHT—But no reference to the

gentleman from Wayne [Mr. Ketcham] will not prevail. I ask the gentlemen in this house in Convention that they do not allow this thing to be characterized as a farce. It is due to the dignity and the authority of this Convention that this call shall be maintained at least until we have a quorum. I shall certainly have shame upon my cheek if it be abandoned at this time.

Mr. SMITH—I hope this motion will not prevail. It is the first time that I have voted in favor of a measure of this kind, but having gone thus far, it seems to me we cannot preserve our dignity and self-respect, and secure in the future the attendance of members, if we retrace our steps. There has been enough of Chinese thunder on this subject already. When members accepted a nomination to this body, they pledged themselves that if elected they would perform their duties as delegates, and would attend its sessions. But it is well known to members who are present, that many who have been elected to this body have absented themselves from day to day, whenever their convenience or business called them away. We have repeatedly found ourselves without a quorum, and been unable to proceed with our business. There has been, as suggested by the gentleman from Kings [Mr. Van Cott], a flourish of trumpets, but it has never amounted to anything. We have substantially made proclamation by our proceedings on this subject that we were not in earnest, and it has brought the Convention into contempt. Absentees pay no attention to us, or our proceedings against them. I have come here myself repeatedly, from a sense of duty, and under threatened calls of the Convention, at considerable personal inconvenience, and to the neglect of other duties, when there has not been a quorum, and we were unable to proceed with the business of the Convention. The public are uneasy, and the entire body has to suffer for the delinquencies of these members who constantly absent themselves. It seems to me that, having entered upon this call with a view of enforcing our rules, if we desire to maintain our self respect, and secure the attendance of members in the future, we must not retrace our steps. If we hesitate now, and stop with a mere flourish of trumpets as on former similar occasions, all future efforts to enforce our rules will be vain. I insist that we shall maintain our position and proceed with this call. If absent members have good excuses, the Convention will receive them; but they should not be permitted to absent themselves with impunity, delay the proceedings of the Convention, and bring the whole body into contempt.

Mr. MERRILL—I presume that this Convention have made up their minds upon this question, and I therefore move the previous question.

The question was then put upon ordering the previous question and it was declared carried.

The question was then put on the motion of Mr. Ketcham and it was declared lost by the following vote:

*Ayes*—Messrs. Baker, Ballard, Bowen, Conger, Daly, Hale, Ketcham, Krum, Mattice, A. J. Parker, Pond, Schell, Schumaker, Silvester, Strong, S. Townsend—16.

*Noes*—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Barker, Bell, Bickford, E. A. Brown, W. C. Brown, Case, Champlain, Chesbro, Clark, Clinton, Cooke, Corning, Duganne, C. C. Dwight, T. W. Dwight, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Merwin, Opdyke, C. E. Parker, Potter, Prosser, Rathbun, Root, Rumsey, A. D. Russell, Seaver, Seymour, Smith, Spencer, Tappen, Van Campen, Van Cott, Wakeman, Wales—54.

Mr. ALVORD—For the purpose of bringing this matter to a close, it seems to me that we have gone far enough now in the direction in which gentlemen have gone to determine that this call shall be proceeded with. I, therefore, take the liberty to move that all persons not now within the bar of this Convention and not excused, be declared in contempt, and that the warrant of the President—

Mr. SEYMOUR—Will the gentleman permit me to present an excuse?

Mr. ALVORD—No, I will not—and that the warrant of this Convention by its President be issued and the sergeant-at-arms be directed to take the warrant and confine its execution to the limits of the city of Albany for the present, as I understand, within a few moments the cars will arrive, which will give us a sufficient number to make a quorum of members in attendance upon the duties of this Convention, and upon this question, I move the previous question.

Mr. SEYMOUR—I rise to a point of order—that this Convention was considering and had decided to hear excuses which might be offered for gentlemen who are absent, and we were proceeding with that, and which was the order of business which was unfinished, and it should be finished before the motion of the gentleman from Onondaga is put.

The PRESIDENT *pro tem.*—The Chair is of opinion that the point of order would have been well taken if earlier made, but the present order of business having been entered upon cannot be superseded except by a reconsideration.

Mr. SEYMOUR—I wish to present an excuse—

Mr. ALVORD—I rise to a point of order—that no vote was taken by this Convention that excuses should be made, but the Chair decided upon the suggestion of the gentleman that anybody in the Convention could rise up and make excuses, but there was no vote taken at all, and, therefore, it is not any order of business.

The PRESIDENT *pro tem.*—The Chair is informed that the gentleman from Onondaga is correct, and the point of order is not well taken.

Mr. SEYMOUR—I still rise to a point of order. I wish to state to the President this state of facts upon a suggestion made—

Mr. ALVORD—I call the gentleman to order.

Mr. SEYMOUR—I am speaking to a point of order. Upon the suggestion made to the President we did adopt that order of business, and by consent of the Convention it was adopted, which is equivalent to a vote.

The PRESIDENT *pro tem.*—The Chair understands the point of order, but must overrule it.



the practice of administering those rules and he has therefore got into the habit of enforcing them very stringently. I do not sympathize with him at all in this respect. I see no object in a call of this Convention on Monday at such an early hour. I say it does not comport with the dignity of this Convention, without any notice to members to that effect, to fine or hold every man in contempt who is not here at ten o'clock on Monday morning. It has been well said by the gentleman from New York [Mr. Daly] that this Convention passed a resolution late in the week for adjourning on Saturday for the very purpose of allowing members the privilege of going home, and I think if we permit them to go home on Saturday, it is wrong not to permit them to come back here on Monday morning without requiring on their part a breach of the law that forbids traveling upon the Sabbath. It is proper that they should have an opportunity to reach their places here in this Convention at a proper time and as soon as they can on Monday morning, and I am opposed to this whole matter of a call at this time, and I am not convinced by any of the reasons which have been put forth that it is proper. I think it is unfair and unjust to those members who are absent, and I also hope they will be excused for the further reason which have been assigned, that practically it will be out of our power to get them here by enforcing this call any sooner than they will come without it. If you send the sergeant-at-arms for them, and we stay here until they get back, you will find that every gentleman will render a good excuse for his absence, and will be excused, and that we shall have spent the time and the call in vain.

Mr. VAN COTT — I hope this resolution will not prevail. We were in a position this morning in which we could have passed over in silence the absence of those members, and I was in favor, under the circumstances, of taking no notice of it. I think, however, we are no longer in that position, and I hope the gentlemen who determined upon a call of the Convention will now have the courage to proceed with it to the end. I was opposed to the call while the matter was in the choice of the Convention; but I am now in favor of going to the extremity of the call. We certainly ought to have it in our power to have a quorum here to proceed with our business; but we shall never have it in our power morally to call this Convention and enforce the call if we stop again to-day. I was here a fortnight ago when it was attempted and then we stopped in the midst of the call, and it proved utterly ineffectual. I am here again to-day, and it is proposed to stop again. These gentlemen took advantage of our former failure, and they will take advantage of this. The majority who ordered the call are here, and if they have the courage can proceed with it, and gentlemen who opposed it are now added to the majority, and we now insist that the self-respect of this Convention and its authority over these members shall be maintained, and after we have gone to the point where gentlemen can make their own excuses in person, I shall be glad to listen to their excuses with indulgence. Let us go to that point for self-respect's sake, for the

authority of the Convention's sake, and for the sake of the very important trusts which are committed to us, and in the discharge of which we cannot proceed unless we have this control over the presence of the members of this Convention.

Mr. TAPPEN — I desire to renew my motion that Mr. Cochran be excused, and move that he be now admitted.

Mr. FIELD — I understand that Mr. Cochran has been in town all the time, and was here half an hour before the Convention met, and it strikes me if Mr. Cochran is admitted he can better make his own excuse than any other person can do it for him.

Mr. OPDYKE — I suppose it would be in accordance with the rules if I offer an amendment that Mr. Cochran be now admitted and asked for his excuse.

Mr. POND — I will withdraw my motion until that is done.

Mr. BICKFORD — I would, if in order, move that the doors be opened and all who are ready to come in be permitted to come in and make excuses if they can.

Mr. ALVORD — I would ask the gentleman from Jefferson [Mr. Bickford] and the gentleman from New York [Mr. Opdyke] what they mean by opening the doors and letting all come in. If they make the proposition that the sergeant-at-arms be directed to go outside and find what members are in attendance knocking at the door, and arresting them and bring them in, it will perhaps be correct; but to open the doors to Mr. Cochran will be to allow everybody else to come in.

Mr. KETCHAM — I desire to renew the motion of the gentleman from Saratoga, to purge all members now absent or by implication declared in contempt by the action of the Convention. I believe it was stated when the resolution was adopted providing for an adjournment at one o'clock P. M. on Saturday, instead of two o'clock, that it would enable many members to go home, and in pursuance of this apparent invitation of the Convention, members have gone home and have not yet had the opportunity to return, except by traveling on the Sabbath, so that by the course we are pursuing we insist upon a breach of the Sabbath, which I do insist is improper. I therefore renew the motion of the gentleman from Saratoga [Mr. Pond], and hope that a vote will be taken on it, and that it be by ayes and noes. I do not like the Convention to appear to be requiring members to violate the laws of God and the State by traveling on Sunday.

Mr. BELL — I understand that by a recent order of the Convention, which was adopted after thorough discussion, we decided to commence our daily sessions at ten o'clock A. M., and at two o'clock P. M. take a recess to half-past seven o'clock P. M. This was to be the standing rule on this subject, except as to Fridays and Saturdays. The rule regulating our sittings on those days is that on each alternate Saturday we are to adjourn at one o'clock P. M. to ten o'clock A. M. on the next Monday, and on each alternate Friday we are to adjourn to half-past seven o'clock P. M. on the succeeding Monday.

Mr. VAN CAMPEN — I trust the motion of the

The question was then put on excusing Mr. T. W. Dwight from voting, and it was declared lost.

Mr. T. W. DWIGHT — I am compelled to vote "no."

Mr. Hale's name was called.

Mr. HALE — I ask to be excused from voting. My reasons are these: I do not think it is due to myself, or to other members of this Convention, to be obliged to vote on a question of this importance, when we have been favored with one speech, and one speech only, in favor of the matter, and there has been no opportunity for any one to speak against; in other words, when the previous question has been ordered upon a question involving the liberty of members of this Convention, without any opportunity for debate, except by the gentleman who advocates it.

The question was then put on excusing Mr. Hale from voting, and it was declared lost.

Mr. HALE — I vote "no."

Mr. Prosser's name was called.

Mr. PROSSER — I ask to be excused from voting. I am in favor of one part of this proposition and am opposed to the other. I am willing that the resolution declaring members of the Convention who are absent without leave in contempt shall pass, but not the portion which authorizes the arrest.

The question was put on excusing Mr. Prosser from voting, and it was declared lost.

Mr. PROSSER — I vote "no."

Mr. Seymour's name was called.

Mr. SEYMOUR — I ask to be excused from voting. My reasons are these: while I believe it is in the power of this body to issue the process indicated, I do not feel as a man of honor that I have a right to vote for it until I have had an opportunity to present an excuse for a member of this Convention, who requested that I should present such an excuse for him when he left, and which excuse I deem to be good and valid, and which I have tried for a long while to present.

The question was put on excusing Mr. Seymour from voting, and it was declared lost.

Mr. SEYMOUR — I vote "no."

Mr. Silvester's name was called.

Mr. SILVESTER — I ask to be excused from voting. Without stating what my opinion was with respect to the main question, before it had been put, I desired to present excuses for two members, and I had no opportunity to do so.

The question was put on excusing Mr. Silvester from voting, and it was declared lost.

Mr. SILVESTER — I vote "no."

The SECRETARY completed the call of the roll, and the motion of Mr. Alvord was declared carried by the following vote:

*Ayes* — Messrs A. F. Allen, N. M. Allen, Alvord, Andrews, Barker, Bell, Bickford, Case, Clinton, Cooke, Duganne, C. C. Dwight, Ely, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Merwin, Opdyke, Rathbun, Root, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Van Campen, Van Cott, Wales — 42.

*Noes* — Messrs. Baker, Ballard, Bowen, E. A. Brown, W. C. Brown, Champlain, Chesebro,

Clark, Conger, Corning, Daly, T. W. Dwight, Hale, Harris, Ketcham, Krum, Mattice, A. J. Parker, C. E. Parker, Pond, Prosser, Schell, Schumaker, Seymour, Silvester, Strong, Tappeu, S. Townsend, Wakeman — 29.

Mr. CONGER — I move a reconsideration of the vote which has just been taken, and when the reconsideration is ordered, as I think it will be unquestionably by the Convention, I shall move for a division of the question.

Mr. ALVORD — I rise to a point of order. In moving for a reconsideration, the gentleman must not discuss it, but it must lie over under the rule.

Mr. CONGER — I moved a reconsideration as a privilege of this House. I now move it over again as a question of privilege of this Convention.

Mr. ALVORD — I rise to a point of order that that is not a question of privilege.

Mr. CONGER — It is a question of the privilege of the Convention; I ask it as a question of the privilege of this Convention under the law which constitutes this body, and which expressly forbids any such action as that which has been claimed by the majority. The law expressly forbids it, and it is a question of the privilege of the Convention, if I know what such a question is.

The PRESIDENT *pro tem.* — It is in the power of the house, and the gentleman will proceed.

Mr. CONGER — In the law organizing this body the law says:

"The Convention shall have the power to punish as a contempt, and by imprisonment—

Mr. ALVORD — I rise to a point of order.

The PRESIDENT *pro tem.* — The gentleman from Rockland [Mr. Conger] will continue to state his point of order, the Chair does not quite understand the point as yet.

Mr. CONGER — That law says "the Convention shall have the power to punish, as a contempt and by imprisonment or otherwise, a breach of its privileges, or of the privileges of its members; but such power shall not be exercised, except against persons guilty of one or more of the following offenses:

1. The offense of arresting a member or officer of the Convention, in violation of his privilege from arrest, as hereinbefore declared.

2. That of disorderly conduct in the immediate view and presence of the Convention, and directly tending to interrupt its proceedings.

3. That of publishing any false and malicious report of the proceedings of the Convention, or of the conduct of a member in his delegated capacity.

4. That of refusing to attend or be examined as a witness, either before the Convention or a committee, or before any person authorized by the Convention or by a committee, to take testimony in the proceedings of the Convention.

5. That of giving or offering a bribe to a member, or attempting by menace, or any other corrupt means or device, directly or indirectly, to control or influence a member in giving his vote, or to prevent him from giving the same.

Mr. BARKER — Will you read the next sentence?

Mr. CONGER — Certainly:

The question was then put upon ordering the previous question, and it was declared carried, on a division, by a vote of 35 to 23.

The PRESIDENT *pro tem.* announced the question to be on the motion of Mr. Alvord that all absentees not excused are in contempt, and that the President shall issue his order for their arrest.

Mr. CHESEBRO — On that I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. COOKE — I would like to inquire whether this motion will subject every person to punishment who has not been specifically excused here to-day, although he may have had leave of absence.

The PRESIDENT *pro tem.*—The Chair is of the opinion that all who have leave of absence are not in contempt.

Mr. COOKE—It seems to me from the form of the gentleman's motion it would exclude all who have not been specifically excused.

Mr. SEYMOUR—I would ask the Chair if the motion was not that the order be confined to the city of Albany?

The PRESIDENT *pro tem.*—I believe it was.

Mr. ALVORD — What I said was, that for the present the sergeant-at-arms be instructed not to go without the limits of the city of Albany.

Mr. SEYMOUR — I would inquire whether the desire is that the warrant be issued for all that are absent?

Mr. ALVORD — Certainly.

Mr. SEYMOUR — I hope the motion will not be carried.

The PRESIDENT *pro tem.* — The Chair understands it in this way, that all members of the Convention not present, and not excused either by leave of absence or by formal excuse here to-day, be declared in contempt, and that the President issue his orders to the sergeant-at-arms for their arrest, and that the sergeant-at-arms be directed not to execute that order except in the vicinity of the capital.

The SECRETARY commenced to call the roll.

Mr. S. TOWNSEND — I would ask whether the motion is divisible?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is.

Mr. S. TOWNSEND — Then I ask it be divided.

Mr. ALVORD — I rise to a point of order that the roll has commenced to be called, and it is too late to ask for a division.

The PRESIDENT *pro tem.*—The Chair is of the opinion that the point of order is well taken.

Mr. TAPPEN—I would ask whether it is in order to lay this motion on the table.

The PRESIDENT *pro tem.*—The Chair is of the opinion it is not, the roll having been commenced to be called.

Mr. BALLARD—I wish to ask whether the President deems it a legal right existing in this body to arrest absent members for contempt and hold them as prisoners?

The PRESIDENT *pro tem.*—The point of order does not rise at this time. It is not the province of the Chair to instruct the Convention, and gentlemen will vote according to their own legal knowledge in that respect. The President will

have to decide that when he comes to issue the warrant, at least in some respects.

Mr. S. TOWNSEND—I would suggest to the Chair and the Convention, when about to take so important a step, whether it would be proper to reduce the resolution to precise language in writing?

Mr. ALVORD—I call the gentleman to order.

The PRESIDENT *pro tem.*—The gentleman is not in order. The Secretary will proceed with the calling of the roll.

The name of Mr. Ballard was called.

Mr. BALLARD—I ask to be excused from voting, and my reason is that I do not believe that this body —

Mr. ALVORD — I rise to a point of order, that from the very terms in which the gentleman began his excuse it is no excuse.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the gentleman has a right to state his excuse in his own manner.

Mr. BALLARD — My excuse was, I have legal doubts in my own mind, as to the right of this body to arrest absent members, and hold them as prisoners.

The question was put on excusing Mr. Ballard from voting, and it was declared lost.

Mr. BALLARD — I vote "no."

Mr. COCHRAN — I am in doubt as to my right to vote upon this question, having been in contempt some moments, and I ask, therefore, to be excused.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the gentleman has no right to vote, not yet being purged of his contempt, being in contempt for being absent on the call of the roll.

Mr. BAKER—Is it in order to move that the gentleman be excused as a privileged question?

The PRESIDENT *pro tem.*—Not at present, when the call of the roll is proceeding.

Mr. PARKER—I wish to ask the President if he is not in error in saying that the gentleman is in contempt?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is not necessary for a formal vote to declare him in contempt. The mere absence at the call of the roll when a call of the Convention has been ordered places him in contempt.

Mr. A. J. PARKER—Therefore I do not see the use of this resolution that we are voting upon, the first part of it.

Mr. T. W. Dwight's name was called.

Mr. T. W. DWIGHT—I ask to be excused, and wish to give my reasons. I find, sir, there is no case on record in this country where any Convention has ever exercised the power of sending for its absent members, and Mr. Jameson, in his work on the subject of Constitutional Conventions, states very distinctly that the Convention has no such power. If we proceed without authority on this subject, every lawyer knows we are liable personally to an action for false imprisonment. It is, therefore, my desire to have a committee raised to examine into this question before we vote upon it.

The PRESIDENT *pro tem.*—The gentleman is transcending, somewhat, the limits of giving an excuse.



Mr. CONGER — I move to reconsider the vote just taken, and that that motion lie on the table.

The CHAIR — That cannot lie on the table for the same reason that it is an appeal which must be decided.

The question was put on the motion of Mr. Conger, and it was declared lost.

Mr. OPDYKE — I move that Mr. Cochran be now brought to the bar of the Convention and be permitted to state his excuse.

Mr. BAKER — As an amendment I propose the following resolution which will embrace all the members who are present:

*Resolved*, That the Clerk proceed without delay and complete the call of the Convention, that all the members absent without leave be and are hereby declared in contempt; that the sergeant-at-arms open the doors of this Convention and admit all members in the city awaiting to be admitted herein, when each of such absent members may present his excuse at the bar of this Convention which shall immediately act upon such excuse.

The PRESIDENT *pro tem.* — If it is moved for a suspension of the call, it is in order.

Mr. BAKER — I understand it is confirmatory of, and modifies the motion of the gentleman from Onondaga [Mr. Alvord], and is in part a suspension.

The PRESIDENT *pro tem.* — The Convention has just directed that the absent members be placed in contempt, placed in arrest and the warrant be issued to that effect, and that must be reconsidered before this motion is in order.

Mr. POND — Is it in order to move a suspension of the call now?

The PRESIDENT *pro tem.* — The Chair is of the opinion it is.

Mr. POND — I make that motion then. I think this order of business has now proceeded so far as to convince those who originally voted against it that they were right originally and I hope they will come around now and vote to suspend the further call of this Convention.

Mr. HITCHCOCK — Is not the pending question on a motion of the gentleman from New York [Mr. Opdyke]?

The PRESIDENT *pro tem.* — The question was upon the motion of the gentleman from Montgomery [Mr. Baker] who offered his resolution as an amendment to the motion of the gentleman from New York [Mr. Opdyke], as a part of the call; and the gentleman from Saratoga [Mr. Pond] moved to suspend the call, and that motion is in order.

Mr. BICKFORD — I would inquire whether if the motion of the gentleman from Saratoga [Mr. Pond] prevails it will supersede the order just made by the Convention, that the President issue his warrant for the arrest of the absent members?

The PRESIDENT *pro tem.* — The Chair is of the opinion that it will.

Mr. SEYMOUR — I hope the motion of the gentleman from Saratoga [Mr. Pond] will prevail. I am as anxious as any member of this Convention to sustain its dignity and proceed with its business, but I do protest against our proceeding and shutting out from the consideration of the Convention the cases of those gentlemen who have

good and valid excuses. When gentlemen have left the city under circumstances which we know will be justified by the majority of this Convention, unless their excuses be stated, I deem it to be unjust that we should proceed against them in this summary way. I can conceive of no reason why we should. I do not think we shall gain anything to the business of the Convention in the future, if we proceed thus without hearing the excuses which we have commenced to hear. We should not, after hearing a number of excuses from gentlemen that satisfy this Convention, take this step and exclude others who have good excuses to be presented by their friends who are here, and who are notified of it. I will go as far as any gentleman here in the right and proper path to maintain the dignity of this Convention, to insure the attendance of the members, and to dispatch the business of the Convention. I regret as deeply as any member here that we have been left without a quorum this morning, but I do protest against this proceeding that shall shut out the justice of the claims of our peers here upon this floor to be excused, and that they, whether they are rightfully or wrongfully absent, shall be declared by us who happen to be here this morning, to be in contempt, while they may have good excuses which we ought to accept. I know it is not the intention of this Convention to declare any honorable member of this Convention in contempt who has a good excuse for being absent. If so, I ask why do we do it by proceeding in this call, and issuing the process for arresting men who have had no opportunity through their friends, or by themselves in person, to present their excuses. I shall vote for the motion of the gentleman from Saratoga [Mr. Pond], and hope we shall stop these proceedings at least until members who are charged with the duties of giving excuses for other members who are necessarily absent shall have the privilege of presenting these excuses to the consideration for the Convention. I think we owe it to ourselves to do so.

Mr. MERRITT — I rise to a point of order. The point of order is that the Chair has no right to entertain a motion which is equivalent to a question which has been decided to be not in order, and from the fact that the motion to reconsider has been decided not in order, therefore no motion can be entertained which is equivalent to that motion.

The PRESIDENT *pro tem.* — The Chair does not understand the gentleman's point of order.

Mr. MERRITT — A certain proposition was adopted by this Convention and there was a motion to reconsider that proposition, and it was decided to go over under the rule. The proposition now submitted is admitted to be equivalent to a motion for a reconsideration.

The PRESIDENT *pro tem.* — The Chair is not of the opinion that it is an equivalent motion.

Mr. MERRITT — With that decision of the Chair I do not concur. A motion to reconsider pertains to the business of the day, and, therefore, it is one which is proper to be entertained and decided here, and does not go over under the rule as all motions to reconsider.

"In all cases in which the Convention shall punish any of its members or officers, or any other person, by imprisonment, such imprisonment shall not extend beyond the session of the Convention."

Very good. What does that amount to? That proves nothing.

Mr. ALVORD — Without desiring to be officious, I rise again to state my point of order. It seems to me the gentleman has exhausted his question of privilege —

Mr. CONGER — It is not a question of personal privilege; it is a question of the privilege and power of this Convention.

The PRESIDENT *pro tem.* — The Chair is of the opinion that it is not a question of privilege.

Mr. CONGER — I do not ask it as a question of personal privilege, but as a question of the privilege of the Convention.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the motion to reconsider must lie on the table.

Mr. CONGER — Is that the absolute decision of the Chair?

The PRESIDENT *pro tem.* — It is.

Mr. CONGER — Then I take an appeal from the decision of the Chair, and ask that the appeal lie on the table.

The PRESIDENT *pro tem.* — It will lie on the table, there being no objection.

Mr. BAKER — I have drawn a resolution that may possibly get us out of the difficulty.

Mr. ALVORD — I rise to a point of order. The Chair has just directed the motion of the gentleman from Rockland to lie on the table.

The PRESIDENT *pro tem.* — The Chair stated there being no objection, it would be laid on the table.

Mr. ALVORD — I understood it might lie on the table.

The PRESIDENT *pro tem.* — The Chair understood it so if there was no objection.

Mr. ALVORD — There was an objection, certainly.

Mr. CONGER — The objection was not taken in time.

The PRESIDENT *pro tem.* — The objection was taken in time, as it was taken before the announcement, though unheard by the Chair.

Mr. CONGER — The objection was taken after the absolute decision of the Chair.

The PRESIDENT *pro tem.* — The objection was taken on the supposition that the Chair decided positively. The Chair holds the objection was taken in time, and the appeal from the decision of the Chair must now be decided.

Mr. MERRITT — I am very sorry this question has arisen.

Mr. BAKER — I wish to inquire whether I have not the floor? I arose, was recognized by the Chair, and began to read a resolution.

The PRESIDENT *pro tem.* — The gentleman from St. Lawrence [Mr. Merritt] has the floor.

Mr. MERRITT — I am very sorry the step has been taken, and I do believe in adhering —

Mr. ALVORD — I am under the necessity of rising to a point of order.

Mr. MERRITT — I am discussing the appeal.

Mr. ALVORD — I understand it, sir, but an ap-

peal taken on a non-debatable question is not debatable.

The PRESIDENT *pro tem.* — The Chair is of that opinion.

Mr. MERRITT — I rise to a point of order — that the question of reconsideration is debatable, and the appeal is therefore debatable.

The PRESIDENT *pro tem.* — The motion for a reconsideration lies, by the rule, on the table immediately upon its being made, therefore it is not debatable. The gentleman from Rockland [Mr. Conger] made a motion to reconsider, and the Chair decided it must be laid on the table. He then rose and claimed, as he undoubtedly candidly thought, that it was a privileged question, and therefore could be entertained. The Chair decided against him, that it must lie on the table. He appealed from that decision, therefore the appeal is not debatable — otherwise, the whole object of the rule, that the motion to reconsider must lay on the table, would be avoided, and the Convention would be swept off into a vortex of debate upon questions aside from the main issue. The Chair is of the opinion that the question must be put on the appeal immediately.

Mr. MERRITT — May I ask a question? If when that motion to reconsider was properly before the Convention it was debatable, the question of reconsideration and an appeal from it is properly before this Convention.

Mr. ALVORD — It seems to me the gentleman from St. Lawrence [Mr. Merritt] does not understand the appeal. It is from the decision of the Chair that the motion to reconsider must lie on the table.

Mr. MERRITT — That is the point I wish to argue.

Mr. TAPPEN — I desire to raise a point of order, that no debate is now in order on this subject, because the Chair directed a vote to be taken on the appeal, and a portion of the vote has been taken.

Mr. MERRITT — I rise to a point of order — that the Chair has no right to take the vote without discussion.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the question on the appeal must be at once taken.

Mr. MERRITT — Without discussion?

The PRESIDENT *pro tem.* — Yes, sir.

Mr. MERRITT — On that I appeal from the decision of the Chair.

Mr. ALVORD — I rise to another point of order, that appeal cannot be filed on appeal.

The PRESIDENT *pro tem.* — The Chair is of the opinion that one appeal must be decided at a time.

Mr. POND — Is it in order to move to lay this business on the table?

The PRESIDENT *pro tem.* — That is the very question, whether it shall lie on the table.

Mr. POND — I wish to move to lay the whole order of business on the table.

The PRESIDENT *pro tem.* — It is not in order at present. The question is on an appeal taken by the gentleman from Rockland [Mr. Conger], from the decision of the Chair.

The question was put on sustaining the decision of the Chair, and it was declared carried.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. ALVORD — I would ask the Chair if taking a recess until half-past seven o'clock does not do away with proceedings under the call.

The PRESIDENT *pro tem.* — The Chair is of the opinion that the breaking off of the proceedings in the Convention now, suspends proceedings under the call.

Mr. SILVESTER — That is one of the objects I had in moving an adjournment, because when we met again, we would then be in a condition by reason of the presence of a quorum, to resume the business of the Convention without discussing this business of the excuses of members.

The SECRETARY proceeded to call the roll on the motion of Mr. Silvester, and it was declared lost by the following vote:

*Ayes* — Messrs. Baker, Ballard, Bowen, E. A. Brown, W. C. Brown, Champlain, Chesebro, Clark, Conger, Corning, T. W. Dwight, Hale, Harris, Ketcham, Krum, Mattice, Merwin, A. J. Parker, C. E. Parker, Pond, Potter, Schell, Schumaker, Seymour, Silvester, Strong, Tappen, S. Townsend, Wakeman — 29.

*Noes* — Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Barker, Bell, Bickford, Clinton, Cooke, Duganne, C. C. Dwight, Ely, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Opdyke, Prosser, Rathbun, Root, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Van Campen, Van Cott, Wales — 41.

Mr. CONGER — I move to commit the resolution that has been passed, by which the Convention orders the sergeant-at-arms to proceed to the arrest of members outside of the bar of the Convention, to a select committee of three, to consist of the gentleman from Oneida, Mr. T. W. Dwight, the gentleman from Cortland, Mr. Ballard, and the gentleman from Essex, Mr. Hale, for them to require and report as to the power of this Convention to proceed any further in an attempt to arrest any of its members on the ground of contempt for non-attendance.

The PRESIDENT *pro tem.* — The Chair is of opinion that the motion is not in order, there being no quorum present.

Mr. POND — I would inquire whether rule 34 does not authorize that? It provides that the Convention may take such measures as they may deem necessary to procure the attendance of a quorum of members, and the proposition of the gentleman from Rockland [Mr. Conger] is to inquire as to the proper mode.

The PRESIDENT *pro tem.* — The Chair is of the opinion that it does not authorize the appointment of a committee as proposed.

Mr. CONGER — I will modify my resolution, to come within that provision, and require the committee to instruct the Convention as to the measures that they may deem necessary to secure the presence of a quorum, and also to report whether the measure just adopted instructing the sergeant-at arms to arrest members, is not beyond the power of the Convention.

The PRESIDENT *pro tem.* — The Chair is of

the opinion that the motion of the gentleman [Mr. Conger] is not in order.

Mr. CONGER — I do not desire to propose any course of action which will not tend to relieve this body from the very disastrous effects of the resolution which has been passed; and, if I understand the law—

The PRESIDENT *pro tem.* — The Secretary requests that for the convenience of making up the Journal, that the gentleman will reduce his motion to writing.

Mr. CONGER — I will.

Mr. ALVORD — I observe that two gentlemen who were absent and who were declared to be in contempt by action of the Convention are now on the floor. I move that they be requested to state if they have any excuses to offer by which they can be purged of their contempt.

The PRESIDENT *pro tem.* — Will the gentleman designate?

Mr. ALVORD — Mr. M. I. Townsend and Mr. Cochran.

The PRESIDENT *pro tem.* — The Chair is informed that the gentleman from Rensselaer [Mr. M. I. Townsend] was excused from contempt by a vote of the Convention, and Mr. Cochran was admitted by a vote of the Convention to state the reasons for his absence.

Mr. ALVORD — I must challenge the Journal of the Secretary if it so states. I desire to state, what every member of the Convention knows to be the fact, that a motion was made by the gentleman from Rensselaer [Mr. Seymour] to excuse Mr. M. I. Townsend, a separate and distinct motion — and that motion was lost, and the Convention never recurred again to the original proposition.

Mr. SEYMOUR — I call the gentleman from Onondaga [Mr. Alvord] to order.

Mr. ALVORD — I desire to have order.

Mr. SEYMOUR — I would ask the Secretary to refer to the Journal.

The SECRETARY proceeded to read from the Journal, as follows:

"Mr. SEYMOUR moved that Mr. M. I. Townsend be excused.

"Mr. C. C. DWIGHT moved, as a substitute for such motion, that all members absent without leave be excused. After debate the motion was withdrawn."

The PRESIDENT then put the question on excusing Mr. M. I. Townsend, and it was decided in the affirmative.

Mr. COCHRAN — Mr. President, I am very glad to have an opportunity to purge myself of the alleged contempt of the Convention. I regret very much that my absence, temporary though it was, should have contributed in part to delay the proceedings of this body. I have been careful to avoid any complicity in that misfortune, and have, therefore, refrained from returning to my home on Saturday nights, as was the habit of many, fearing that I might not be able to reach here in time to participate in the deliberations of the body on the following Monday morning. On last Saturday I did not return to my home, but I did venture to make a visit to one of the neighboring rural districts. The train on which I was returning this morning was



The **PRESIDENT pro tem.**—The Chair is of the opinion that the point of order is not well taken.

**Mr. RATHBUN**—I have taken very little interest in the proceedings so far, in reference to the matter now pending; and I feel very little interest in the present condition of things, any further than that the Convention should maintain its consistency in the future action which is to be had upon this question. We have, as I understand it, declared that certain members of the Convention, who are absent, are in contempt. I object, therefore, to any excuse in behalf of those gentlemen except from themselves. We have gone one step too far to allow any one to give excuses for members except the members themselves who are declared to be in contempt. Now, whether the action of the Convention is to proceed further than to bring enough of the absent members in to make up a quorum, depends upon the feeling of the Convention. I desire, and I believe no member of the Convention present desires to go any further in this matter than I, to obtain a quorum of members so as to be able to do business. The order which has been made will necessarily bring to us, within the course of half an hour, and I presume if the doors were now open there would come in, a requisite number. But inasmuch as the order has been made by the Convention that the sergeant-at-arms proceed to arrest and bring in these members, I hope that the Convention will adhere to that, because I apprehend the gentlemen absent will not feel they are very much injured providing they have excuses. I have no doubt that most of them have excuses which will be satisfactory to the Convention. The matter of arrest, we all understand very well, is not a very serious thing. I believe the sergeant-at-arms hardly ever takes a member by the shoulder, or says anything to him more than that he is wanted inside of the chamber. I doubt very much whether any of the members of this Convention, if arrested, will bring an action for false imprisonment for being invited in, through the sergeant-at-arms. Now, although it is not a very serious matter, or injurious to the reputation or person of a member, yet I do insist that this Convention either has, or has not, the power to control a majority of its members so as to be able to do the business for which we are sent here. I do insist that, inasmuch as we have gone so far in the direction of the exercise of power which I have no doubt is possessed by the Convention, we shall go one step further, and that the members of the Convention who are to be found in the city, will be brought in here, and that we make up from them a number sufficient, so that the Convention will be organized and be competent to do business, and that we hear excuses from them and not from anybody else. I hope, therefore, that the motion upon this subject will not prevail.

**Mr. SILVESTER**—I hope that the motion of the gentleman from Saratoga [Mr. Pond] will prevail. It seems to me that during the whole of this morning we might have been much more profitably occupied in discussing the main business of the Convention than we have been. I do not know how the question was raised, but certainly

the business might have proceeded without a quorum as we have done before. It seems to me we should now, be better occupied in discussing the main subject before us, and that even having proceeded as far as we have in this matter it would be much more profitable to dispense with any further proceeding under the call than to attempt to get members here to hear their excuses; for when they come in and a quorum is present, we shall have proceeded, during their absence, with the main business of the Convention. I move the previous question.

The question was then put on the motion of Mr. Silvester, and it was declared carried.

The **PRESIDENT pro tem.** announced the question to be on the motion of Mr. Pond.

**Mr. ALVORD**—On that I call the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The **SECRETARY** proceeded to call the roll on the motion of Mr. Pond, and it was declared lost, by the following vote:

**Ayes**—Messrs. Baker, Ballard, Bowen, E. A. Brown, Champlain, Chesebro, Clark, Conger, Corning, T. W. Dwight, Hale, Harris, Ketcham, Krum, Mattice, Merwin, A. J. Parker, C. E. Parker, Pond, Schell, Schumaker, Seymour, Silvester, Strong, Tappen, S. Townsend—26.

**Noes**—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Barker, Bell, Bickford, W. C. Brown, Case, Clinton, Cooke, Daly, Duganne, C. C. Dwight, Ely, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Opdyke, Prosser, Rathbun, Root, Rumsey, L. W. Russell, Seaver, Smith, Spencer, Van Campen, Van Cott, Wakeman, Wales—45.

**Mr. LAPHAM**—I move that the Convention do now adjourn.

**Mr. BARKER**—I desire to inquire of the Chair what effect the motion of the gentleman [Mr. Lapham] will have, if it is carried, upon the pending business—whether it suspends the call?

The **PRESIDENT pro tem.**—The Chair is of the opinion that it will terminate the proceedings under the call.

**Mr. LAPHAM**—Do we not resume it on the coming together of the Convention?

The **PRESIDENT pro tem.**—The Chair is of the opinion that the subject of the call cannot then be resumed.

**Mr. LAPHAM**—Then I withdraw the motion.

**Mr. SILVESTER**—I move that all proceedings be suspended under the call until half-past seven o'clock.

The **PRESIDENT pro tem.**—The Convention has just taken action upon that motion.

**Mr. SILVESTER**—I move then that we now adjourn.

**Mr. ALVORD**—Upon that I call the ayes and noes.

**Mr. HALE**—I would inquire whether the motion to adjourn would be equivalent to a recess until half-past seven o'clock or until to-morrow morning.

The **PRESIDENT pro tem.**—In the opinion of the Chair it would be equivalent to taking a recess until half-past seven o'clock.

The PRESIDENT *pro tem.*—In the opinion of the Chair the point of order is well taken.

Mr. S. TOWNSEND—I would like to inquire what process is going on at this moment to insure a quorum?

The PRESIDENT *pro tem.*—The sergeant-at-arms is in pursuit of absentees at this time—so the Chair is informed.

Mr. SILVESTER—I would like to ask a leave of absence until half-past seven o'clock.

The PRESIDENT *pro tem.*—In the opinion of the Chair it is not in order to grant a leave of absence as requested.

Mr. CONGER—In obedience to the direction of the Chair I have reduced the resolution I proposed to writing. I would say in reference to the names that I have inserted as members of the committee, that I have retained them in accordance with the resolution as I announced it orally, but that I will request the Clerk for the present to omit the reading of the names (Messrs. Dwight, Ballard, and Hale), as I do not wish to seem to interfere with the ordinary rule by which the President appoints members of the committee.

The SECRETARY proceeded to read the resolution, as follows:

*Resolved*, That the resolution of the Convention just passed, authorizing, among other things, the sergeant-at-arms to arrest certain members of the Convention for contempt because of non-attendance at this morning's session, be referred to a select committee of three, to report to the Convention, whether this Convention has the power under the law constituting it, so to order the sergeant-at-arms to make arrest of any members for non-attendance; and that the said committee have power to report to the Convention what measures they may, under the law, recommend as necessary to secure the presence of a quorum at this time, or any future occasion, and what censure may be lawfully inflicted on those now absent or who may hereafter absent themselves from the sessions of this body.

Mr. ALVORD—I rise to a point of order. There being no quorum present, the resolution cannot be entertained.

Mr. CONGER—I beg pardon of the gentleman [Mr. Alvord]. I refer the Chair to rule 34, and I will say to the gentleman from Onondaga [Mr. Alvord] that if the whole is not admissible I am willing to divide the question.

Mr. ALVORD—I insist upon the point of order.

The PRESIDENT *pro tem.*—The point of order is well taken. The Chair has already taken the position that rule 34 confines action to members who are present, and does not authorize them to refer anything outside of this Convention to a committee on which to report to the Convention, and more especially as this comes in conflict with the action they have already taken, which cannot be disposed of except by a reconsideration.

Mr. CONGER—I hope that the Chair has not decided that point of order yet without a hearing.

Mr. ALVORD—I must insist upon the point of order.

The PRESIDENT *pro tem.*—The Chair having said it had decided it, it must be understood that it has decided it.

Mr. CONGER—I regret the Chair has so decided the question, for it forces upon me the necessity, for the first time in this Convention, of taking an appeal from the decision of the Chair, in order to plainly state the point I wished to maintain, before I took my seat when the gentleman from Onondaga [Mr. Alvord] arose. I wish to state the grounds upon which I think the latter part of the proposition must commend itself to every gentleman present.

The PRESIDENT *pro tem.*—Does the gentleman from Rockland [Mr. Conger] appeal from the decision of the Chair?

Mr. CONGER—I do, if the decision is stated in advance.

The PRESIDENT then announced the question to be on sustaining the decision of the Chair.

Mr. CONGER—Under rule 34 this Convention has, in the absence of a quorum, the power to take such measures as they may deem necessary to secure the presence of a quorum, and may inflict such censure as they may deem just. If they have the power to do that in the absence of a quorum they have unquestionably the power, by the axiom that the whole always contains a part, to refer that question to a committee; and the latter part of my proposition is simply to have this question so referred in order to advise this Convention, before it takes any such action as proposed. I, and many gentlemen about this circle learned in the law, firmly believe the action proposed, to be entirely in violation of the privileges of every member of this body, and would be so gross an attempt at a violation of personal liberty as to make the officer of this House responsible at common law for breach of the law in the arrest of any member. If the law gave us any inkling even of power to arrest, if it put us in the same condition in which a legislative body is placed, I would not pretend to raise the question, but would admit that it was clear that the Convention had power. But we see that the Convention has no power except what the law has given it.

The PRESIDENT *pro tem.*—The Chair is decided in its opinion. The gentleman will confine himself to the discussion of the appeal.

Mr. CONGER—I will then state the point in question in such a way, and without argument, that there may be clearly seen by the Convention the ground upon which I take the appeal. I hope it will not be supposed that I am taking a factious appeal or an appeal to gain time. I take it simply because I regard it as an important question, and I desire to get it before this body in such a shape that it may act advisedly upon it. If the law gave this Convention the general power to arrest its members, I could not pretend to raise the question of order or the question of appeal. But the law definitely states five certain cases under which the Convention may order the arrest of any of its members or of other persons; and the question of non-attendance is not included in any of the five cases, so that the attempt on the part of the Convention to assume legislative functions in the arrest of its members for non-attendance is a violation of the peace and order of society and of the fundamental law of the State.

Mr. HALE—I would ask the gentleman from

somewhat delayed, and having my children with me, I was compelled to take them with me to the house which is my temporary home, and which is not within the city limits, but is some distance beyond; and as soon as I had taken them home, I returned as quickly as I could with proper respect to the Convention, and found the doors locked; that a call of the house had been ordered, though it was not yet completed. I have no other excuse to offer. I say again that I regret to have contributed to the inconvenience of the Convention, and submit myself wholly to whatever disposition they may make.

Mr. VAN CAMPEN — I move that the gentleman from Westchester [Mr. Cochran] be purged of contempt.

The question was put on the motion of Mr. Van Campen, and it was declared carried.

Mr. HALE — I move that this Convention do now adjourn.

Mr. VAN CAMPEN — On that I call the ayes and noes.

Mr. BICKFORD — I rise to a question of order. There is a permanent order in this Convention that the Convention will take a recess each day at two o'clock until half-past seven, and therefore a motion to adjourn now is inconsistent with that order.

The PRESIDENT *pro tem.* — The Chair is of opinion that the point of order is not well taken. The prior order of the Convention only fixes the limit beyond which the morning session shall not continue. An adjournment before that time arrives can be had if the Convention sees fit.

Mr. E. A. BROWN — Is it in order to move to take a recess until half-past seven o'clock?

The PRESIDENT *pro tem.* — The Chair is of the opinion that it is.

Mr. E. A. BROWN — Then I make that motion.

Mr. ALVORD — I rise to a point of order. A motion to adjourn takes precedence over a motion for a recess.

The PRESIDENT *pro tem.* — The Chair is of opinion that the motion to adjourn takes precedence.

Mr. HALE — I will withdraw my motion to adjourn.

Mr. E. A. BROWN — I move then that the Convention take a recess until half-past seven.

Mr. ALVORD — I would inquire of the Chair whether, if that motion is carried, it will not do away with all proceedings under the call?

The PRESIDENT *pro tem.* — The Chair has already stated that it will.

The question was then put on the motion of Mr. E. A. Brown, and it was declared lost.

Mr. BICKFORD — I would make an inquiry whether, with an order existing that a recess is to be taken each day at two o'clock until half-past seven, that order can be executed on this occasion.

The PRESIDENT *pro tem.* — The opinion of the Chair is, that to take it would result in a suspension of the proceedings under the call.

Mr. DALY — I rise for the purpose of making a suggestion and asking, if we adjourn at the regular hour of two o'clock, it will have the effect of dissolving proceedings under the call? In my own

judgment it will. But I make this suggestion that we can meet again at such hour as we have agreed upon, and renew the call of the Convention, and the practical result we desire would be realized in that way. I will add, in addition, that the most effectual and successful mode of securing the attendance of members is to be found in the practice of the House of Representatives and Senate, and that is to call the roll every morning, and note the absentees, and have them published from day to day. It is a far more practical and effectual mode than that of securing the attendance of members through the instrumentality of a call of the Convention. I beg leave to take the judgment of the Chair whether, if we adjourn at the regular hour under the rule, it will dissolve the call of the Convention.

The PRESIDENT *pro tem.* — The Chair is of the opinion that it does, because the doors must be opened and remain open, and the chamber will be accessible to absentees as well as other members.

Mr. WAKEMAN — I would inquire whether it is in order to move to suspend the call of the Convention until half-past seven?

The PRESIDENT *pro tem.* — That would be tantamount to a suspension of the call entirely, in the opinion of the Chair.

Mr. VAN CAMPEN — I desire to ask if the sergeant-at-arms has gone in pursuit of absent members?

The PRESIDENT *pro tem.* — The Chair is informed that the sergeant-at-arms is absent from the chamber in pursuit of absentees.

Mr. HALE — If in order, I wish to ask leave of the Convention to be excused for the period of half an hour. My reason is this: a relative of mine is about to leave town soon after two o'clock, and whom it is important I should see before he leaves.

The question was put on the motion to grant a leave of absence to Mr. Hale for a half hour, and it was declared carried.

Mr. DUGANNE — I would ask if it is in order to move that leave of absence be granted to all members now present until half-past seven o'clock.

The PRESIDENT *pro tem.* — The Chair is of the opinion that such a motion would be tantamount to a motion for an adjournment, and would have the same effect.

Mr. SILVESTER — Is it in order for me to ask that Mr. Sheldon be excused from contempt?

The PRESIDENT *pro tem.* — The Chair is of the opinion that it is not in order at present.

Mr. TAPPEN — I would ask leave of absence for myself, for the reason that, in my anxiety to get here this morning, I had no breakfast, and certainly I am entitled to something to eat before the day passes by. It seems to me, it is a question of humanity to grant me leave of absence for twenty minutes. [Laughter.]

Mr. ALVORD — A great many of us had a very poor breakfast in our efforts to get here at nine o'clock, and I must object to granting the request of the gentleman from Westchester [Mr. Tappen].

Mr. SEAVER — I arise to a point of order, that in the absence of a quorum, the Convention has no power to grant leave of absence.



man [Mr. Conger] did not understand me. I will state the matter as plainly as I can. I deny that the minority have any power to appoint a committee. That is the position and nothing else.

Mr. CONGER—I understand that the gentleman [Mr. Alvord] denies the power, but when he attempts to state his reason for denying the power he fails, because by the rule the minority has jurisdiction of every subject and every circumstance under which I ask that this committee shall be raised, in order to advise the Convention.

Mr. E. A. BROWN—I move the previous question.

The question was then put on the motion of Mr. E. A. Brown, and it was declared carried.

The PRESIDENT *pro tem.*—The question is, shall the decision of the Chair stand as the opinion of the Convention?

Mr. E. A. BROWN—I call for the ayes and noes.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

Mr. CONGER—Do I understand the Chair to decide that both parts of my proposition are not in order?

The PRESIDENT *pro tem.*—The Chair is of the opinion that nothing can be done in the absence of a quorum except in pursuance of power specially conferred, and as the Chair construes rule 34, a minority must remain in session and they themselves act upon any question brought before them. They cannot create a committee to inquire and report at some subsequent time, as must necessarily be the case where a legal question is involved. The minority must remain in session to decide for themselves.

Mr. KETCHAM—I rise to a question of privilege. The dumping of the coal in the street between this building and Congress Hall, makes so much noise that it is impossible for gentlemen to hear the remarks either of members or the Chair.

The PRESIDENT *pro tem.*—The Chair appreciates the difficulty in reference to dumping the coal and has given directions in regard to it, but it desires to state it has no personal power to remedy it. [Laughter.]

Mr. SCHUMAKER—I rise to a question of privilege. I have not yet had any breakfast and I desire leave of absence to get breakfast.

The PRESIDENT *pro tem.*—The Chair has no power to excuse gentlemen on account of their not having had their breakfasts.

Mr. WAKEMAN—I move the Convention take a recess until half-past seven.

The question was put on the motion of Mr. Wakeman, and it was declared lost.

Mr. ALVORD—I understand that the Chair is going to rule that under the order of the Convention, we are in recess at a certain point of time until half-past seven o'clock. I shall request the Chair, if it is proper, that it instruct the officers of the Convention to take charge of the chamber, and permit no one else to come in or go out except those members who have been in attendance this morning at the hour of the recess.

The PRESIDENT *pro tem.*—The Chair has not so announced its decision. It is in doubt upon that question.

Mr. ALVORD—Do I understand the Chair as deciding that we have no power to take a recess? The PRESIDENT *pro tem.*—The Chair has not decided that point. It has not arisen.

Mr. ALVORD—I understood that the Chair had decided that point, and that was my reason for making the suggestion.

Mr. A. J. PARKER—Is it not a settled rule that the Convention must take a recess at two o'clock until half-past seven o'clock? Can that be interfered with by the action of the minority?

The PRESIDENT *pro tem.*—That is the resolution on the Journal.

Mr. A. J. PARKER—It seems to me that that must govern us—that we must take a recess from two o'clock until half-past seven.

Mr. LAPHAM—I would submit to the Chair this consideration: The members of the Convention now present take no order whatever. We simply obey an order of the Convention adopted prior to to-day, which is that at two o'clock a recess should be taken until half-past seven. That does not, in my view, suspend this call at all. It leaves the call in full force. We are simply obeying a mandate of this Convention which is obligatory on us, although we are a minority. We do not adjourn; we do not take any action which suspends the call; we simply obey an order which has been announced previous to this time.

The PRESIDENT *pro tem.*—The Chair will state that the hour at which, by a previous resolution of the Convention, a recess was to be declared until half-past seven has arrived. The Convention may do as it pleases.

Mr. MERRITT—I would like to inquire whether the order of the President to keep the doors closed will remain in force until after the recess?

The PRESIDENT *pro tem.*—The Chair supposes the order is in force. Gentlemen will decide for themselves if it will allow members to depart and return at half-past seven o'clock.

Mr. ALVORD—Do I understand the Chair as declaring the Convention in recess?

The PRESIDENT *pro tem.*—The Chair will not so declare. If gentlemen separate, the question will come up again on the incoming of the Convention.

So the Convention separated.

#### — EVENING SESSION.

The Convention re-assembled at half-past seven, the President *pro tem.*, Mr. FOLGER, in the chair.

Mr. ALVORD—Mr. President, I understand that there are a number of gentlemen, delegates to the Convention present, who are in charge of the sergeant-at-arms. In order to receive their excuses for their absence I move that they be brought before the bar of the Convention.

Mr. SILVESTER—I would like to inquire of the President whether the recess from two o'clock to half-past seven did not dissolve the call?

The PRESIDENT *pro tem.*—The Chair is not aware of any recess so far as the Journal of the Convention discloses.

Mr. SILVESTER—I think we all feel very sensibly that we have had a recess.

Rockland [Mr. Conger], if he has considered this provision of the law: "And such Convention may adopt such rules and regulations for its own government as the majority of its members may determine." Under that provision of the law, the Convention have adopted rule 34, which makes legal the very course which we have adopted.

Mr. CONGER — I hardly think it will be necessary to present or argue that question on this appeal, because, if the law, in the first instance, has clearly stated the causes for which the Convention might order an arrest of members, and has expressly declared that it shall not order the arrest of members except for those reasons, and as I read the law, it has so done, then clearly it cannot pass any rule for the regulation of proceedings, or the government, or of its order, that it would be in derogation of the mandate of law that it should not so arrest. I hope that the gentleman will look at this question, because, if the opinion expressed by my friend on my right should be adopted on mature consideration as the judgment of this Convention, it would put the Convention into the anomalous position of ordering members to be arrested by the sergeant-at-arms in absolute violation of the enabling act by which this body is convened.

Mr. ALVORD — I desire, although, of course, like all others who talk upon subjects of this kind, I would like to enlarge somewhat, to confine myself directly to the question at issue, and have nothing whatever to do with extraneous matters which the gentleman from Rockland [Mr. Conger], under the pretext of an appeal, undertakes to bring into discussion. Rule 34 provides this:

"In case of the absence of a quorum at any session of the Convention, the members present may take such measures as they may deem necessary to secure the presence of a quorum, and may inflict such censure as they may deem just on those who, on being called on for that purpose, shall render no sufficient excuse for their absence."

Now, sir, that is delegating the power of the Convention to a minority of the Convention.

Mr. CONGER — If the gentleman [Mr. Alvord], will allow me to state, I will say that the committee I propose is to be constituted of gentlemen representing the majority and not the minority.

Mr. ALVORD — I think I understand the gentleman [Mr. Conger], distinctly. Now, sir, when the power is delegated to a minority by a rule of the Convention, that minority is confined to these delegated powers; and they cannot go outside of them, not by implication, not even though all the members could swear that according to their information and belief it was the intention of the Convention to give the minority greater powers. They are bound by the exact terms of the rule as it has been laid down by the Convention, and for that reason we have no authority and no power, and cannot by possibility get it by implication or otherwise, for the appointment of a committee.

Mr. CONGER — Will the gentleman [Mr. Alvord], allow me to suggest that I do not propose to delegate the power of this Convention? I merely put the question and ask that a select committee be appointed to report to the Convention on this subject of power.

Mr. ALVORD — I understand the gentleman. The more he speaks about it the muddier he makes it on his own side. The gentleman asks us, a minority of this Convention, who have specific powers beyond which we cannot go, to go outside of the bounds by the appointment of a select committee. We have no authority to authorize a committee of that kind to report to the Convention. We have power delegated by the Convention to the minority, by which we can arrest members who are absent and have left the Convention without a quorum; but when the minority attempts to appoint a committee with authority to report to the Convention we go outside of the power granted to this body, and we cannot by any possibility appoint a committee for that reason. I take it that the presiding officer of this Convention has based his decision upon that ground, and on that ground alone. Leaving out this question, which the gentleman [Mr. Conger] has undertaken to raise by the query of the gentleman from Oneida [Mr. T. W. Dwight] and the gentleman from Cortland [Mr. Ballard], it is simply a question of what power we have got under the rule. I do not know but what I might agree with my friend from Oneida [Mr. T. W. Dwight], although I seriously doubt it; for I think I could convince him, upon an argument of the case, that there is an undoubted power on the part of the Convention through the minority, under our rules, to punish these men for contempt, and to arrest them; but that is not the question. It is a question of exercising an original power as a minority, under the rule which has delegated to us certain specific powers, and I say we cannot go beyond them. I think the decision of the presiding officer of this Convention was just and should be sustained by the Convention.

Mr. CONGER — If I understand the gentleman from Onondaga [Mr. Alvord], all that can be made out of his argument is this, that because under rule 34, a minority —

Mr. VAN CAMPEN — I rise to a question of order. It is this: that under the question of an appeal it seems to me the discussion has gone as far as it ought to go.

The PRESIDENT *pro tem.* — The gentleman from Rockland [Mr. Conger], will confine himself to discussing the question of appeal.

Mr. CONGER — I propose to proceed to reply to the position taken by the gentleman from Onondaga [Mr. Alvord], who says that while, under the rule, the minority of the Convention, not being a quorum, has certain powers committed to it, yet they cannot refer the question of that power or the exercise of it to a select committee, simply because it is a minority. It takes possession of the question and the power, because it is a minority, and it has just the same right as the majority has when it has jurisdiction over a question to refer that question to a select committee. If I had asked or wished that the minority here should delegate power, the argument of the gentleman might hold good, but I ask for no such remedy, but only that the question of power and suggestions of what plan the committee should recommend be referred to this committee in order to advise us —

Mr. ALVORD — I apprehend that the gentle-

Mr. ALVORD—The facts are that, although I requested the gentleman [Mr. Corbett] as he has stated, he did not comply with the request, and I had to pay the expressage on the clothes. [Laughter.]

The question was then put on the motion to excuse Mr. Corbett, and it was declared carried.

Mr. BICKFORD—I don't wish to hear any more excuses.

The PRESIDENT—Does the gentleman [Mr. Bickford] make a motion?

Mr. BICKFORD—I do.

SEVERAL DELEGATES—"No; no."

Mr. BICKFORD—Very well—I withdraw it.

Mr. EDDY appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Eddy, you have been absent without leave; what excuse have you to offer?

Mr. EDDY—My excuse is that I was sent for to return home on very important business. I took the first opportunity to return, but did not reach here in time for the morning session. Aside from the engagements that I had to meet, another cause of my absence, and one that was quite as important, was to confer immediately with my constituents in regard to the important matters under consideration in this Convention. And I give it as my opinion, Mr. President, that if more of the members of this Convention would confer immediately with their constituents, it might effect a great saving of time, and many questions and resolutions, etc., that are brought before us would not be introduced. I embraced that opportunity to confer with my constituents, and I came back as soon as I could.

Mr. GRAVES—I move that the gentleman be excused.

Mr. TAPPEN—I would like to know what the gentleman's constituents advised him on this subject. [Laughter.]

Mr. EDDY—I will state to the gentleman if he wishes to know.

The question was then put on the motion to excuse Mr. Eddy, and it was declared carried.

Mr. SCHELL—I now move that all proceedings under the call be suspended, and on that motion I move the previous question.

The question was then put on the motion of Mr. Schell, and it was declared carried.

Mr. SHERMAN—I move to reconsider the action of the Convention by which the previous question was ordered. I will state, if the Convention will give me leave, why I do so. I wish to offer an amendment, in case the previous question is not ordered on the motion of the gentleman from New York [Mr. Schell], by adding to the motion as follows: "Provided—

Mr. CONGER—I rise to a point of order, that this resolution must lie over under the rule.

The PRESIDENT *pro tem.*—The motion to reconsider the previous question being as to business before the Convention, it ought not to lie over. [The President *pro tem.*, on subsequently consulting the rule, learned that he was in error.]

Mr. SHERMAN—If there is no objection, then I will propose the amendment, as follows:

"Provided, that members still absent without leave be held in contempt until they shall

respectfully render their excuses and submit to the judgment of the Convention."

Unless we adopt some such resolution, those who are still absent escape censure.

The question was put on the motion to reconsider the vote by which the previous question was ordered, and it was declared carried, on a division, by a vote of 37 to 33.

The PRESIDENT *pro tem.*—The pending question is, shall the main question be now put?

Mr. SHERMAN—I now renew my motion to amend. The amendment is in the possession of the Secretary.

Mr. WEED—I trust the amendment will not prevail. I am opposed to it for this reason. It has been apparent to every gentleman who has been here to-day that this call has entirely interfered with and destroyed the business of the day. Now, if it can have any effect at all upon the members of this Convention it must be a moral effect, for certainly, no gentleman here supposes that a fine or imprisonment will be imposed upon absent members. Its moral effect will be just as great if this call should be suspended now, as it would be if we suspend it under the proposed amendment. There are seventy or eighty members absent in contempt. If you leave these members in contempt, for the next three days, one quarter of the time of this Convention will be taken up with explanations, and the giving of reasons, and the taking of questions upon excusing members who are now in contempt. It seems to me, therefore, looking at it as I do, that the moral effect is the only effect that you have accomplished with all your proceedings to day. It would be more consistent with our duties as members of the Convention to suspend the call entirely upon the motion of the gentleman from New York [Mr. Schell].

Mr. ALVORD—I beg to differ with the gentleman from Clinton [Mr. Weed]. In the first place his premises are entirely incorrect. A call of the roll was had this morning, and we were found to be without a quorum, so that it was entirely impossible to do any business afterward.

Mr. WEED—Will the gentleman allow me to ask him a question? Does he not know in his legislative experience that one-half of the legislation—good legislation too—is done in the absence of a quorum? Except that gentlemen had seen fit to make a call, there was no reason why you could not have gone on to-day with the business.

Mr. ALVORD—I have this answer to make to the gentleman from Clinton [Mr. Weed] in that regard. I am aware of the fact that considerable of the routine business in the ordinary legislation of the State is carried on without a quorum; but I have always had serious doubts whether it was not quibbling with the law if not absolutely violating it, and that it was necessary—absolutely necessary—that there should be a quorum of members of the Legislature in attendance upon the transaction of any business that might come before it. I should, for one, have been contented this morning to have remained silent and permitted the business of this Convention to go on without starting the idea of a quorum not being in attendance. But it was suggested and a call of the roll was had; and, while I might



Mr. POND — Has the Chair forgotten that it declared the hour for recess had arrived?

The PRESIDENT *pro tem.*—The Chair has not forgotten what it declared.

Mr. COOKE — Are we not guilty of a violation of the rules in not having a recess?

The PRESIDENT *pro tem.* — That point is not before the Convention at present.

Mr. POND — Then I make that point.

Mr. WEED appeared before the bar of the Convention.

The PRESIDENT *pro tem.* — Mr. Weed, you are before the bar of the Convention for a violation of its rules, in being absent without leave. What excuse have you to offer?

Mr. WEED — My excuse, Mr. President, is that I was necessarily South on the Sabbath, in New Jersey, intending to be here this morning. But I found it was impossible to get a train into New York in time, so I took the first train up this morning, arriving here too late to appear before 2 o'clock. That is all the excuse I have.

Mr. HITCHCOCK — I move that the excuse of Mr. Weed be accepted.

The question was put on the motion of Mr. Hitchcock, and it was declared carried.

Mr. SHERMAN next appeared before the bar of the Convention.

The PRESIDENT *pro tem.* — Mr. Sherman, you were absent without leave of this Convention. What excuse have you to offer?

Mr. SHERMAN — I raise no question of order as to the regularity of these proceedings, although my own opinion is that they are entirely irregular. You ask me, Mr. President, what excuse I have for my absence. I will tell you frankly. I had some business to transact with a bank in Utica this morning which required me to be present during banking hours. Being present there at that time, rendered it impossible for me to return in time for this morning session. I have a large number of other excuses that I could give if necessary, but it seems to me that this ought to be conclusive.

Mr. FLAGLER — I move that the gentleman be excused.

The question was put on the motion of Mr. Flagler, and it was declared carried.

Mr. WEED — In coming up to the chamber this evening, I met the gentleman from Wayne [Mr. Archer], who, it seems, was absent this morning. He informed me that he had received a telegram that required him to go north to get a sick daughter, and take her home. He had just returned in the evening train, and was about to go west with his daughter immediately. I therefore move, in pursuance of his request, that he be excused.

Mr. BELL — Allow me to inquire if it will not be time enough to grant the excuse when Mr. Archer returns? Several gentlemen are waiting here to be excused.

The PRESIDENT *pro tem.* — Does the gentleman withdraw his request?

Mr. WEED — Yes, if it is thought that it will take less time to withdraw it than to grant it.

Mr. SHELDON next appeared before the bar of the Convention.

The PRESIDENT *pro tem.* — Mr. Sheldon, you were absent without leave. What excuse have you to offer?

Mr. SHELDON — I had a note due this day at one of the Poughkeepsie banks, and went there to pay it. That is all the excuse I have. I thought I had rather be in contempt here than there. [Laughter.]

Mr. BOWEN — I wish to say one word in relation to Mr. Sheldon. I know he has a daughter who has been sick for some time, and in the early part of the week I heard him ask the gentleman from Oneida to request leave of absence for him. For some reason he did not do so; on account of the sickness of his daughter I feel bound to speak a word in his behalf.

The question was put on excusing Mr. Sheldon, and it was declared carried.

Mr. MORRIS next appeared before the bar of the Convention.

The PRESIDENT *pro tem.* — Mr. Morris, you have been absent without leave of the Convention. What excuse have you to offer?

Mr. MORRIS — Mr. President, in reply to the question I have to say, that I had two or three notes to pay, and had no money to pay them with. I thought it was necessary for me to make arrangements in order to meet my obligations, and thus required my personal attendance, and I am happy to say, I was successful in my efforts. Having accomplished my object I hastened back, and I now present myself at the bar of the Convention.

Mr. CORNING — I move that the gentleman be excused. I know the importance of a man paying his notes. [Laughter.]

The question was put on the motion to excuse Mr. Morris, and it was declared carried.

Mr. CORBETT next appeared before the bar of the Convention.

The PRESIDENT *pro tem.* — Mr. Corbett, you have been absent without leave. What excuse have you to offer?

Mr. CORBETT — It is well known that the personal appearance of my colleague from Onondaga, [Mr. Alvord] has been severely criticised during the past two or three weeks. On Saturday he requested me to call at his house on Monday morning and bring him some clean clothes. [Laughter.] It is that which detained me.

Mr. ALVORD — I would ask the gentleman whether he called at my house to get the clean clothes?

Mr. CORBETT — Am I obliged to answer that question? [Laughter.]

Mr. POND — I move the gentleman be excused. I think the fine, if any, should be imposed on the gentleman from Onondaga [Mr. Alvord].

Mr. ALVORD — I would ask the gentleman [Mr. Corbett] to answer categorically, the question I put to him.

SEVERAL DELEGATES — "No; no."

Mr. ALVORD — If he will not answer the question, I will have to explain.

Mr. CHESEBRO — In addition to the fact of Mr. Corbett being excused, I move that the Convention impose upon his colleague [Mr. Alvord] the penalty that he put the clean clothes on. [Laughter.]

Rumsey, L. W. Russell, Seaver, Sherman, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales—54.

*Noes*—Messrs. Ballard, Bowen, Carpenter, Champlain, Chesebro, Clark, Cochran, Conger, Corbett, Corning, Daly, Hale, Harris, Ketcham, Krum, Landon, Mattice, Morris, A. J. Parker, Pond, Potter, Schell, Schumaker, Seymour, Silvester, Sheldon, Tappen, Weed—28.

The question then recurred on the motion of Mr. Schell, as amended on the motion of Mr. Sherman.

Mr. MERRITT—I would like to inquire whether the aggregate vote present would make a quorum?

The PRESIDENT *pro tem.*—The Secretary informs the Chair that eighty-two gentlemen have answered to their names.

Mr. POND—Is it in order to move to lay the resolution of the gentleman from New York [Mr. Schell] on the table?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is not.

Mr. A. J. PARKER—Is it in order to ask that the question be divided?

The PRESIDENT *pro tem.*—The Chair is of the opinion that it is.

Mr. A. J. PARKER—I ask that division.

Mr. ALVORD—With due deference to the Chair the question has been made double by the action of the Convention. Therefore, in my opinion, it is not divisible.

The PRESIDENT *pro tem.*—The Chair is still of the opinion that the gentleman can call for a division of the question.

Mr. SHERMAN—I submit that the gentleman from Onondaga [Mr. Alvord] is right, that the question is not divisible; and I think I can satisfy the President that it is not.

Mr. WEED—I rise to a point of order; the Chair has decided the question to be divisible.

The PRESIDENT *pro tem.*—The gentleman has the right to appeal.

Mr. SHERMAN—I call the attention of the Chair to rule 34 of this Convention, as follows:

"If any question contain several distinct propositions, it shall be divided by the President, at the request of any member, provided each subdivision if left to itself, shall form a substantive proposition; but the motion to strike out and insert shall be indivisible."

The PRESIDENT *pro tem.*—The Chair is of the opinion that the last part of the resolution will form a distinct substantive proposition.

Mr. SHERMAN—Suppose the first part is rejected, would the second become a substantive proposition?

The PRESIDENT *pro tem.*—It would with a few words added to it.

Mr. SHERMAN—It seems to me it would be a tail without a dog to it. [Laughter.]

The PRESIDENT *pro tem.*—The question seems to be, in the opinion of the Chair, susceptible of division. In the first place, the Convention can vote whether there will be a suspension of the call. In the second place, they can vote, if there is a suspension of the call, what shall be done with the recusants under the call.

Mr. ALVORD—Can I call for the ayes and

noes upon the second portion of the proposition?

The PRESIDENT *pro tem.*—The Chair is of the opinion that the gentleman can.

Mr. ALVORD—Then I am perfectly willing to have the question divided.

The question was then announced on the first part of the proposition.

Mr. SCHELL—I call for the ayes and noes on that question.

Not a sufficient number seconding the call, the ayes and noes were not ordered.

The question was then put on that part of the motion offered by Mr. Schell, and declared carried.

Mr. ALVORD—I call for the ayes and noes on the second proposition.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. WEED—I understand there are members in the hall and the—

Mr. ALVORD—I rise to a point of order, that the previous question has been moved upon this, and no other business can intervene.

Mr. WEED—I rise to a point of order, that the call has been suspended by a vote of the Convention. There are gentlemen in the hall who are denied admittance.

The PRESIDENT *pro tem.*—The Chair is not informed that the call has been suspended by a vote of the Convention.

Mr. WEED—Did not the other vote suspend the call?

The PRESIDENT *pro tem.*—The vote was taken only on the first part of the division, and we must proceed to complete the matter in hand.

The SECRETARY then proceeded to call the roll on the part of the second division, being the amendment offered by Mr. Sherman, and it was declared adopted by the following vote:

*Ayes*—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Baker, Barker, Bell, Bickford, E. A. Brown, W. C. Brown, Case, Clinton, Cooke, Duganne, C. C. Dwight, T. W. Dwight, Eddy, Ely, Field, Flagler, Folger, Fuller, Gould, Graves, Greeley, Hadley, Hammond, Hatch, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Merwin, Opdyke, O. E. Parker, Prosser, Rathbun, Root, Rumsey, L. W. Russell, Seaver, Sherman, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales—54.

*Noes*—Messrs. Ballard, Bowen, Carpenter, Champlain, Chesebro, Clark, Cochran, Conger, Corbett, Corning, Daly, Hale, Harris, Ketcham, Krum, Ludington, Mattice, Morris, A. J. Parker, Pond, Potter, Schell, Schumaker, Seymour, Silvester, Sheldon, Strong, Tappen, Weed—29.

Mr. W. C. BROWN—I ask the unanimous consent of the Convention to give notice of a motion to correct our rules by which we shall be relieved from ever again being caught in the dilemma in which we were placed this morning. Those of us who had remained here, and desired to carry out the rules of the Convention and proceed with our business, found themselves in this unpleasant dilemma: we were imprisoned, and it was only by brute force that we escaped from confinement here, while it was doubtful whether those outside, who were derelict in their duties would be pun-

ished at all. Therefore, if there is no objection, I desire to give a notice.

No objection was made.

Mr. W. C. BROWN—I give notice that I will, as soon as practicable, move an amendment to rule 33, by adding at the end thereof the words as follows:

"A recess, while a call of the Convention is pending, will not terminate the proceedings on the call; but no person shall leave, or return to the Convention, pending a call, without a ticket from the President, which he shall exhibit on leaving and deliver to the doorkeeper on returning."

Mr. WEED—I now renew the motion I made with reference to Mr. Archer, of Wayne. I move that Mr. Archer be excused from his contempt for the reason given.

The question was put on the motion to excuse Mr. Archer, and it was declared carried.

Mr. WEED—I move to reconsider the vote taken on the last part of the proposition which was adopted, and which leaves members in contempt.

The PRESIDENT *pro tem.*—The motion will lie over under the rule.

Mr. HAMMOND—I ask the Convention to excuse Mr. Farnham, who was called away Saturday evening by a telegram. He wished me to present his excuse this morning.

The question was put on the motion to excuse Mr. Farnham, and it was declared carried.

Mr. HALE—There are several gentlemen in charge of the sergeant-at-arms, I believe, who wish to render their excuses. I move that we hear their excuses.

Mr. SEYMOUR—Before that is proceeded with I wish to ask an excuse in behalf of Judge Paige, who, when he left last week, requested me to make the request if it should be necessary. Judge Paige complained that he was unwell. I believe it is within the knowledge of many of this Convention that he has been in a very depressed state, owing to a very severe domestic affliction. He wished to go to Clifton Springs for a few days for his health, and I promised to give this excuse to the Convention, which I hope will be sufficient.

Mr. ALVORD—I am opposed to granting excuses to gentlemen, except upon their own request. To do otherwise, does away with the entire force and effect of all we have done. When Judge Paige shall return here in due course of time, his health being restored, he can make his own excuse; and that time will be sufficiently abundant for the purpose. We have done away with or suspended the call, so that these gentlemen who are absent are not now liable to arrest, wherever they may be, by the sergeant-at-arms of the Convention. When they shall come into the body of the Convention, then they can get up and make their own excuses. Otherwise the result will be that parties can go on and make excuses for others, and perhaps the parties could come in and say that there was no such thing. In this connection, I ask the gentleman from Clinton [Mr. Weed] when he saw Mr. Archer?

Mr. WEED—I will answer the gentleman with a great deal of pleasure.

Mr. HATCH—I do not know what that has

to do with the question of excusing Judge Paige?

The PRESIDENT *pro tem.*—The Chair thinks the question is not in order, as Mr. Archer has been excused.

Mr. ALVORD—I know, that so far as Mr. Archer is concerned, if he had done as his colleagues did, come from Saratoga last evening, he would have been here this morning, and on his making the request he would have been excused, as a matter of course. He received the telegram, as I understand, in this locality, having just returned from Saratoga.

Mr. BALLARD—Is the gentleman not aware that Mr. Archer did not stop at Saratoga, but went on to Washington county, where he met his wife and daughter?

Mr. WEED—I would like to answer the gentleman from Onondaga [Mr. Alvord] as he asks me the question—

The PRESIDENT *pro tem.*—The gentleman from Onondaga [Mr. Alvord] has the floor. Will the gentleman yield?

Mr. ALVORD—I will not.

Mr. HATCH—I want to know what the question is.

The PRESIDENT *pro tem.*—It is on the motion to grant an excuse to Mr. Paige.

Mr. HATCH—What has that to do with Mr. Archer?

The PRESIDENT *pro tem.*—The gentleman from Onondaga [Mr. Alvord] has the floor. The gentleman from Erie [Mr. Hatch] will please be seated.

Mr. ALVORD—I do not desire to get up any fuss in this Convention. I merely desire to do my duty, and I shall do it without any regard to any efforts on the part of others in attempting to drive me from my position. I say, we have gone to work and declared these gentlemen in contempt, and they are in contempt until they are excused from the contempt or purged from it. They can as well present their excuses themselves, when they come within the body of this Convention, and get up in their places one by one and ask to be excused. If we permit this course now we should have permitted it in the first instance. The mistake was in beginning the wrong direction. There should not have been any excuses until the gentlemen were brought here to be excused in their own proper persons, before the bar of the Convention. I believe what the gentleman from Rensselaer [Mr. Seymour] says, in regard to Judge Paige, that he went away in the belief that it was best for him to go to Clifton Springs; and I hope he is there recovering his health. When he comes before us again, with his excuse, of course he will be excused. But I trust we are not to take second hand excuses at this time, in regard to individuals, until we shall finally purge all the members of this Convention who are now absent. The usual and ordinary method of proceeding is to let gentlemen appear in their own behalf, and I trust, therefore, this Convention will not excuse Judge Paige—not because the excuse offered is not upon its face a good one—but, because an excuse should not be stated in that way.

Mr. SEYMOUR—I regret that the gentleman



from Onondaga [Mr. Alvord], when he first rose, should have intimated to this Convention, after the declaration made of the language which Judge Paige used to me, that, perhaps, when Judge Paige came himself to give his excuse, he would give a very different one.

Mr. ALVORD—I call the gentleman [Mr. Seymour], to order, I said no such thing.

Mr. SEYMOUR—I am very sure the gentleman did.

Mr. ALVORD—Mr. President—

Mr. SEYMOUR—I don't yield the floor to the gentleman from Onondaga [Mr. Alvord]. I was about saying that I was very glad the gentleman before he took his seat, upon second thought, had concluded to avow to this Convention that he believed the excuse I had given for Judge Paige, was the right one. That excuse has been presented to this Convention. Other gentlemen, as well as Judge Paige, have been excused without a word of objection, and I appeal to the Convention not to make a distinction in this case that would seem to cast discredit upon an honorable gentleman who has been with us under circumstances painful to himself, doing his duty.

Mr. KETCHAM—I move the previous question.

The question was put on the motion of Mr. Ketcham, and it was declared carried.

The question recurred on the motion to excuse Mr. Paige.

Mr. SEAVER—I rise to a point of order. The Convention has just taken action upon a resolution to suspend further proceedings upon this floor, with the proviso that members in contempt shall remain so until they appear here and purge themselves of that contempt. I hold it to be incompetent for this Convention to proceed any further in regard to excuses until members themselves appear, or until we rescind the resolution which has been adopted.

The PRESIDENT *pro tem.*—The point of order is well taken.

Mr. POND—It seems to me the resolution just read does not—

The PRESIDENT *pro tem.*—Does the gentleman [Mr. Pond] appeal from the decision of the Chair?

Mr. POND—I do, if it is necessary to make the remarks I desire to.

Mr. POND—It seems to me the resolution just read does not require the personal appearance of the absent member at the bar of the Convention. It says that the members absent and in contempt—

The PRESIDENT *pro tem.*—The Secretary will please read the resolution again.

The SECRETARY read the resolution, as follows:

"Provided, that the members still absent without leave be held in contempt until they shall respectively render their excuses and submit to the judgment of the Convention."

Mr. POND—Is it "respectfully" "or respectfully?"

Mr. SHERMAN—It is "respectively"—that is the way I read it when I introduced it: "Provided, that members still absent without leave be held in contempt until they shall respectively render their excuses and submit to the judgment of the Convention."

Mr. WEED—I rise to a point of order. The resolution as passed by this Convention, and as

read by the Secretary when it was passed, and the ayes and noes called upon it, read "respectfully." It was read twice.

Mr. SHERMAN—As I wrote the resolution I intended to write it "respectively," and I supposed it read so.

The PRESIDENT *pro tem.*—The Chair will be governed by the written language.

Mr. POND—It strikes me as a matter of indifference whether the word "respectively" or the word "respectfully" is used, for the resolution does not call for the personal appearance of a member here; and in regard to Judge Paige it is a peculiarly wrong proceeding. This morning, when the call of the Convention was moved, the previous question was also asked upon it, and at that time, I believe, the gentleman from Rensselaer [Mr. Seymour] announced to this Convention that he was requested to make excuses for several gentlemen and he desired to do so now, inasmuch as Judge Paige, when he left, requested an excuse to be made for him. I submit—unless there is some resolution imperatively requiring that Judge Paige shall come here in person to make his excuse—he should not be required to do it. It has been required of no other member. It seems to me, therefore, that the language of this resolution does not show that they shall "respectively" or "respectfully" come here in person to make that excuse; and it is entirely proper and appropriate for Judge Paige to be represented here by the gentlemen of this Convention in the same manner every other gentleman has been represented who has given and been granted his excuse. If he is not excused he remains in contempt every day he is absent. I submit that under the language of this resolution, Judge Paige should be accorded the same privilege that every other gentleman has had, inasmuch as the fact was announced to the Convention this morning that he requested that excuse to be made for him, and by reason of the previous question he was prevented from making it before this order was made. I withdraw the appeal.

Mr. SEYMOUR—I do not wish to be tedious, but simply desire to make a suggestion to the Chair on this question, and it is upon the—

Mr. RATHBUN—I rise to a point of order. The gentleman from Saratoga [Mr. Pond] has withdrawn his appeal.

Mr. POND—I will renew it.

The PRESIDENT *pro tem.*—The Chair will state why it differs from those gentlemen who have expressed views in opposition to its ruling. The purport of the resolution is that absentees must respectfully make their excuses and submit to the judgment of the Convention. How can they submit to the judgment of the Convention if they are not present in person to do that? Suppose the judgment of the Convention should be that they be placed in arrest or subjected to a fine, they could not submit to the judgment of the Convention without being present in person to render their excuses and listen to the determination of the Convention upon it, and submit to arrest or pay the fine.

Mr. SEYMOUR—Will the Chair permit me to make one suggestion?

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The PRESIDENT *pro tem.*—Any gentleman desiring to be purged of contempt will please rise.

Mr. FOWLER appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Fowler, you are before the bar of the Convention on a charge of violating its rule on being absent without leave. What excuse have you to offer for your absence?

Mr. FOWLER—I left on Saturday after the session of the Convention, intending to return in time for this morning's session. I was unable to do so. I could not have returned if I had felt disposed, on account of ill health, and if I had been present this morning and in a position to have made a motion when I came into the Convention, I should have made a motion to be excused from this evening's session. I believe this is about the first time, since the commencement of the Convention—since its organization—that I have been absent from any of its sessions.

Mr. FULLER—I move that Mr. Fowler's excuse be accepted.

The question was put on the motion of Mr. Fuller and it was declared carried.

Mr. PRINDLE appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Prindle, you have been absent without leave; what excuse have you to offer for your absence?

Mr. PRINDLE—Mr. President. I would most respectfully state—

The PRESIDENT *pro tem.*—The Chair is informed that the gentleman from Chenango [Mr. Prindle] was excused.

Mr. PRINDLE—I understood that I was, but heard that I was in contempt.

Mr. C. L. ALLEN—I left here on Saturday afternoon, Mr. President—

The PRESIDENT, *pro tem.*—The Chair would respectfully submit that the gentleman [Mr. C. L. Allen] will have to appear before the bar of the Convention. If there are no objections, however, the gentleman can give his excuse in his place.

No objection was interposed.

Mr. C. L. ALLEN—I was about to remark that I left on Saturday afternoon, intending to return this morning by the early train of cars. I have generally answered to my name in my place, heretofore. This morning is the first time I have failed to answer. I should have reached here by ten or eleven o'clock, but for the illness of a member of my family, who requested me to remain until the afternoon train, in order that I might see how her state of health was. I arrived here in the afternoon train. Under these circumstances, I ask to be excused.

Mr. FLAGLER—I move that Mr. Allen's excuse be accepted.

The question was put on the motion of Mr. Flagler, and it was declared carried.

Mr. JARVIS appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Jarvis, you were absent without leave. What excuse have you to offer?

Mr. JARVIS—On account of illness in my

family, I was compelled to remain over until this day. I am here at the earliest practicable moment, and ask to be excused.

Mr. SHERMAN—I move that Mr. Jarvis' excuse be accepted.

The question was put on the motion of Mr. Sherman, and it was declared carried.

Mr. BEALS appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Beals, you were absent without leave. What excuse have you to offer?

Mr. BEALS—I have to state that I unexpectedly left Albany on receipt of a letter from my family that two members of it were ill. I made arrangements with my colleague, Mr. Graves, that in case my name was called in question before my return, he should state my excuse. I have been informed by my colleague that he had no opportunity to state my excuse. My railroad station is Ilion. On consulting the time table with reference to that station gentlemen will find that the first available morning train passing east is at ten o'clock and twenty minutes, and it arrives here at half-past two. I took the first train this morning which would bring me to this point, and reached here at that hour. By way of courting the sympathy of this Convention, I wish to urge as an argument in my behalf, that this is the first speech I have made during the entire session, and I would have preferred to have been excused even on this interesting occasion. [Laughter.]

Mr. N. M. ALLEN—I move that the excuse of Mr. Beals be accepted.

The question was put on the motion to excuse Mr. Beals, and it was declared carried.

Mr. WILLIAMS appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Williams, you have been absent without leave. What excuse have you to offer for your absence?

Mr. WILLIAMS—I find myself very much in the condition of the gentleman from Herkimer [Mr. Beals]. I recognize the justice of the action on the part of the Convention. I did not intend to leave the city over the past Sunday, but on Saturday morning I received a communication from my family that a brother-in-law and his family were at my house, who had not been there for nearly twelve years, and considerable solicitude was expressed that I should be at home to see them. I left this city with a determination and expectation that I could return this morning in season for the morning's session. Before reaching the terminus of the railroad, I learned that I was under a misapprehension in regard to the early train. The Cincinnati express is made up every Monday morning at Utica; my impression was I could come down on that train and be here in season. I learned my mistake, and then determined to come in the midnight train. On getting home, I found my relatives there, and that they intended to come east this morning, and knowing that my carriage must go to the depot with them, I ventured to remain and come with them. In view of the delay, I very much regret that I took that course. I am not aware that I have any extenuating circumstances to plead except this. I think I have



Mr. SHERMAN—I rise to a point of order. There is no question before the Convention.

Mr. POND—I renewed the appeal for the purpose of allowing the gentleman from Rensselaer [Mr. Seymour] to make his suggestion.

Mr. SHERMAN—The gentleman [Mr. Pond] had not the floor, and he could not do it.

The PRESIDENT *pro tem.*—The gentleman [Mr. Pond] now has it.

Mr. SEYMOUR—I was simply about to call the attention of the Chair to this distinction. Where a member is absent, and has left no one to make an excuse for him, no one is authorized to appear for him, and he appears here as a member giving such facts as may have come to his knowledge.

The PRESIDENT *pro tem.*—The gentleman from Schenectady [Mr. Paige] could not have left one to make an excuse for his being in contempt, because he went away before the call was ordered.

Mr. SEYMOUR—That is true, but apprehending, as has often occurred, that there might not be a quorum, and a call of the Convention might be had, he requested me to present his excuse; and upon the well known principle, *qui facit per alium, facit per se*, I would suggest to the Chair that this is the excuse of the absentee himself.

The PRESIDENT *pro tem.*—The Chair, with the permission of the Convention would state that the maxim *qui facit per alium, facit per se* cannot apply, because he cannot by another go into arrest. If the Convention so orders by resolution he must submit to the order of the Convention—that cannot be done by another.

Mr. W. C. BROWN—It appears to me this discussion has gone far enough. There is no sort of doubt but what every member of this Convention will be willing to excuse Judge Paige whenever they can get the opportunity to do it in accordance with the rules of the Convention. It is perfectly plain to me we cannot do it now. I therefore move the previous question.

Mr. ALVORD—Will the gentleman withdraw his motion for a moment?

Mr. W. C. BROWN—I will.

Mr. ALVORD—I wish to say in regard to this matter that it seems to me that the President, *pro tem.* is eminently right in the decision which he has come to and which decision has been appealed from by my friend from Saratoga [Mr. Pond]. The terms of the resolution itself are specific, in so many words, that the member himself must appear here and submit—

The PRESIDENT *pro tem.*—The Chair will inform the gentleman the word “appear” does not occur in the resolution.

Mr. ALVORD—Nevertheless—

Mr. MERRITT—I rise to a point of order, that debate is entirely out of order, the President *pro tem.* having decided that a motion to excuse the gentleman is not in order on account of the resolution.

Mr. ALVORD—The question, as I understand it, is upon the appeal of the gentleman from Saratoga [Mr. Pond], and I hope I may be permitted to proceed. Gentlemen may do as they please in regard to that, but I propose to speak my opin-

ions before this Convention. My friend from St. Lawrence [Mr. Merritt], is a little outside of the question—

Mr. TAPPEN—Will the gentleman allow me to ask him a question? I ask if the Convention did not adopt the practice, to some extent, of excusing absentees on the request of gentlemen present, and whether that practice was not carried to an extent this morning sufficient to make it the rule which the Convention has recognized during its proceedings this day, and whether, having adopted that practice, the Chair is not bound to conform to it?

The PRESIDENT *pro tem.*—The Chair will state that that was prior to the adoption of this resolution. The Chair based its decision entirely upon the resolution. The practice of excusing members by request of friends after a call of the House is announced has been usual. It has been done in Congress time and time again. But this resolution coming in, in the opinion of the Chair, changes the whole programme, and we must be confined to the resolution which certainly requires a personal appearance in terms, although not in words.

Mr. ALVORD—I will answer the question the gentleman [Mr. Tappen] has put to me. I think it is common sense and good ruling upon the part of this Convention that they should have permitted, even after the call was made, any one to make an excuse here; I consented to it. It is none the less true as a parliamentary rule that in every instance where a parliamentary rule has been departed from, the moment you are again on the right track that moment you are in the right direction. So far as regards this matter I wish to say to the gentleman from Rockland [Mr. Seymour] in regard to Judge Paige, that I did not say what he has ascribed to me. I made the general remark that gentlemen would be in the habit of giving excuses for their friends which when their friends appeared here might not be the excuses which they desired to make. I did not base the remark on the case of Judge Paige at all, but I took the distinct position and made it a part of my remarks that I believed the statement in regard to Judge Paige, but that I desired an end should be put to these excuses as well upon him as anybody else so that we should not be continually jumping up and making excuses for persons who are absent. There were half a dozen gentlemen from the city of New York, who thinking it possible that a call of the Convention might be had, caught me by the coat as they were going away, and desired me to get up some excuse for them, standing upon this floor. I did not agree to do it in any case. It is for that reason I am opposed to granting excuses in behalf of Judge Paige or any one else, and I hope the decision of the Chair will be sustained.

Mr. BARKER—I move the previous question.

The question was put on the motion of Mr. Barker, and it was declared carried.

The PRESIDENT announced the question to be on sustaining the decision of the Chair.

Mr. MORRIS—I understand from the sergeant-at-arms there are four gentlemen present who desire to be purged of contempt. I therefore move that their excuses be now received.

large districts or thirty-two single districts after full discussion. \*

Mr. RATHBUN—I am aware, sir, from conversation with members of the Convention not present that they desire to discuss the question upon the very first section of this article, and it was understood here on Saturday that the discussion upon this branch of the case would not be closed until Tuesday evening—certainly as late as that. I hope and trust no vote will be taken on the question until the Convention is more full, and until those gentlemen have a chance to enter into a discussion of this question of a division of districts—

Mr. BALLARD—Will the gentleman allow me to interrupt him for a moment. I think I was misunderstood. I meant to be understood as not intending to come to a vote to-night.

Mr. RATHBUN—I move then that that section be passed over for the present, when other subjects may be discussed in their order, and this one left until the gentlemen come in to-morrow morning.

Mr. MERRITT—As the next section embraces the subject of enumeration, I hope we will pass that also, and take up the fourth section. If in order, I make that motion.

Mr. BARKER—Let us take up the subject of compensation this evening.

Mr. CHESEBRO—I move that the committee do now rise, report progress and ask leave to sit again.

Mr. MERRITT—I hope not, Mr. Chairman.

Mr. E. A. BROWN—Will the gentleman [Mr. Chesebro] withdraw his motion for a moment?

Mr. CHESEBRO—I will withdraw it at the request of the gentleman.

Mr. E. A. BROWN—I desire to make a suggestion. I do not know as it will meet with the approval of others. The amendment of the gentleman from Richmond [Mr. E. Brooks] to strike out Westchester county from the second district seems to be a great stumbling block in the way of other amendments. It occurred to me that the gentleman from Cortland [Mr. Ballard] might with the unanimous consent of the Convention withdraw his amendment long enough for the Convention to vote upon the amendment of the gentleman from Richmond [Mr. E. Brooks]. That amendment involves no particular principle. Then the gentleman from Cortland [Mr. Ballard] could renew his amendment.

Mr. BALLARD—The view of the previous Chairman of the Committee of the Whole [Mr. Archer] was that the question would be properly taken on the amendment I offered first.

Mr. HATCH—Is a motion in order now to rise and report progress?

The CHAIRMAN—Such a motion is in order.

Mr. HATCH—I think myself that the first question to be settled by the Convention is as to the number of districts. It is the important and controlling question; and therefore that question should be submitted to a full Convention. For that reason, sir, I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Hatch, and it was declared carried.

Whereupon the committee rose and the Presi-

dent *pro tem.*, Mr. FOLGER, resumed the chair in Convention.

Mr. FULLER from the Committee of the Whole reported that the Committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein but not having gone through therewith had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put upon granting leave and it was declared carried.

Mr. TAPPEN—I desire to give notice that I shall move an amendment to our rules.

The PRESIDENT *pro tem.*—The notice is not now in order, if there is any objection.

Mr. BALLARD—I move that the Convention do now adjourn.

The question was then put on the motion of Mr. Ballard and it was declared carried.

So the Convention stood adjourned.

TUESDAY, August 6, 1867.

The Convention met at 10 o'clock, A. M.

Prayer was offered by Rev. PHILIP J. SMITH.

The Journal of yesterday was read by the SECRETARY.

Mr. SCHELL—I perceive sir, that the Journal does not state that the Convention took a recess from two o'clock, until half-past seven.

Mr. FOLGER—I request that the Secretary may read again, that portion of the Journal.

The SECRETARY proceeded to read as follows:

"The hour of two o'clock having arrived, the point of order was raised, that pursuant to a resolution of the Convention, adopted on the 2d inst., a recess must now be taken. The President decided that the point of order was well taken, as to the fact of the adoption of such a resolution."

Mr. FOLGER—The Journal states that the Chair decided the point of order was well taken. The recollection of the member who occupied the Chair [Mr. Folger], is that he stated just precisely, what had been the previous action of the Convention, and said it must be for the Convention to determine for themselves, whether they would remain in their seats. The recollection of the member then occupying the chair, is that he did not say the point of order was well taken, but merely repeated what had been the action of the Convention on the previous day.

Mr. WEED—I would like to ask the gentleman if it was not the fact, that at two o'clock, the Convention dispersed, and that the gentleman from Ontario [Mr. Folger], being President *pro tem.*, did not resume the chair until half-past seven.

Mr. FOLGER—When that point of order was raised, the person occupying the Chair, without deciding (as is his recollection) the point of order, simply stated what had been the action of the Convention, that is, the adoption of the resolution that there should be a recess from two o'clock, until half-past seven, and expressly left it to the Convention to decide what they would do. There was a dispersion of the members without a recess being declared, and there was a re-assembling of the members at half-past seven.

The PRESIDENT—The Journal will be corrected agreeably to that statement.

been here to answer to my name on all former roll calls.

Mr. COCHRAN—I move that Mr. Williams' excuse be accepted.

The question was put on the motion of Mr. Cochran, and it was declared carried.

Mr. YOUNG appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Young, you were absent without leave. What excuse have you to offer?

Mr. YOUNG—I am a magistrate of my town. A couple of weeks ago a cause was adjourned for Monday morning, supposing, at that time, that our sessions would not commence until half-past seven o'clock P. M., and that I could dispose of it and get here in time. At the earnest solicitation of the parties, this morning, I remained to hear the cause. I will further state that it would be impossible for me to arrive here by any means of conveyance at ten o'clock this morning, because the only train of cars that would have brought me here by ten o'clock leaves Poughkeepsie at 4.45 A. M., and it would be impossible for me to cross the river at that hour.

Mr. BELL—I move that the excuse of Mr. Young be accepted.

The question was put on the motion of Mr. Bell, and it was declared carried.

Mr. SCHOONMAKER—I believe I am one of the unfortunate ones—

The PRESIDENT *pro tem.*—The gentleman [Mr. Schoonmaker] will please take his place before the bar of the Convention.

Mr. SCHOONMAKER appeared before the bar of the Convention.

The PRESIDENT *pro tem.*—Mr. Schoonmaker, you have been absent without leave. What excuse have you to offer for your absence?

Mr. SCHOONMAKER—I left home this morning. I expected to have left by the five o'clock train, but last evening, when I was at tea, an old client of mine desired to have a consultation with me, and I, not usually attending to business on Sunday, put him off until this morning at eight o'clock. I saw him then, and left by the ten o'clock train and came up to this capitol and when I came to the door of the chamber, as soon as I arrived, I could not gain admittance. That is my excuse.

Mr. BELL—I move that the excuse of Mr. Schoonmaker be accepted.

The question was put on the motion of Mr. Bell, and it was declared carried.

Mr. KRUM—My colleague, Mr. Miller, obtained leave of absence through me on Saturday morning till to-morrow on account of sickness. I received a letter from him this evening, in which he states that he is under the care of a physician for rheumatism. His physician says it is not well for him to leave his house; he therefore, desires leave of absence for a week.

The PRESIDENT *pro tem.*—Is there any objection.

Mr. GREELEY—I object.

Mr. CONGER—I move that Mr. Miller be granted leave of absence.

Mr. ALVORD—I hope the objection will be withdrawn.

The question was put on the motion of Mr. Conger, and it was declared carried.

The Convention then resolved itself into the Committee of the Whole on the report of the Committee on the Legislature, its Organization, etc. Mr. FULLER, of Monroe, in the chair.

The CHAIRMAN announced the pending question to be upon the amendment offered by Mr. Ballard to the amendment of Mr. Brooks to the article reported by the committee.

Mr. S. TOWNSEND—I would like to inquire whether it is now in order to move a substitute for the first section or not?

The CHAIRMAN—The Chair understands there are two amendments pending, and it is not now in order.

Mr. MERRITT—I hope that the vote will not be taken upon this amendment offered by the gentleman from Cortland [Mr. Ballard], but that he will consent to pass it over informally, and take up other sections of the report. The Convention is not full now, and I know several gentlemen who desire to speak on the question *pro* and *con*. If in order I make that motion.

Mr. TAPPEN—I would like to have the questions now pending read for the information of the Convention. If the amendments are very extensive then a brief statement of them will do.

The SECRETARY proceeded to read the amendments as requested.

Mr. WEED—I wish to ask to have the question upon the motion of the gentleman from Cortland [Mr. Ballard] divided, so that we may take the question first upon the number of single districts; second, upon the question of time; and, third, upon the apportionment suggested by the amendment proposed. The question is divisible, and I ask it now for fear that somebody may object to its being passed over. I ask it so that when the vote is going to be taken, it will be taken in the way I have suggested.

Mr. BALLARD—I will state here that the amendment offered by me calls simply for three propositions. One is to divide the State into thirty-two senatorial districts. The second is that each district shall be entitled to a Senator. The third is a the distribution of territory, as it now exists on the statute book, made in 1866, only a year ago. My purpose was, when we came to vote, to have the question divided and to take the question first on the dividing of the State into senatorial districts. That having been acted upon, then to take up the question as to how many Senators we would have from those thirty-two districts, and the third was in regard to the territory. Now, I think, having debated this question of dividing the State into districts several days, we had better dispose of that question before we pass into a sea of other matters. Let us dispose of that, as to the division of the State into districts. The term of office is another open question—whether it shall be one or four years, and whether the Senators shall be classified or not. But I shall not ask a vote of this Convention until Wednesday, because I think it is better for the Convention to pass upon that question relative to the division of the State into eight



Mr. ALVORD—I rise to a point of order, and it is double. In the first place these are not the kind of words which can be made a part of the Journal, and in the next place the gentleman from Clinton [Mr. Weed] who offers it was not present yesterday, and, therefore, cannot know what took place.

Mr. POND—I will accept the amendment of the gentleman from Clinton [Mr. Weed].

The PRESIDENT—As to the first point of order the Chair thinks the Journal may be amended to correspond with the fact, and as to the second point the Chair is ignorant of the fact whether the gentleman was in his place or not.

Mr. POND—If it is material I have accepted the amendment, and I think the gentleman from Onondaga [Mr. Alvord] will admit that I was here.

Mr. ALVORD—I ask the Chair to rule that no other person than those who have been purged of contempt are authorized to vote upon this proposition.

The PRESIDENT—The Chair so rules.

Mr. NELSON—I would like to ask which are in contempt, those who went out of doors or those who went out of the windows? [Laughter.]

The PRESIDENT—The Chair is unable to decide.

Mr. WEED—Did I understand those who were present in this Convention yesterday to deny the fact stated in that amendment, or is it because they are afraid to put the facts upon the record?

Mr. GOULD—It has been acknowledged by the President *pro tem.* that he left the chair, but that all the Convention abandoned their duties I do not know. There is no proof whatever that the whole Convention left their seats, and I know of no proof but what there was a faithful minority who remained here and made a continuous session, and I would not put it upon the Journal to that effect until the fact was established by some proper legitimate proof. How do these gentlemen who came here late yesterday, and who are proper witnesses, know that a faithful minority did not elect a President *pro tem.* and preserve a continuous session?

Mr. SCHOONMAKER—I happened to be in the room a little after four o'clock, and there were only one or two persons here.

Mr. ALVORD—For the purpose of enabling this vote to be confined to those who were present, I ask for the ayes and noes upon this question.

Mr. HALE—I would state that it appears upon the Journal that I obtained leave of absence for half an hour. Upon my return I got into the hall with very great difficulty and found no President *pro tem.*, and no Convention in session.

Mr. MERRITT—If I understand the duties of the Secretary, it is to record the proceedings of the Convention; and I hold there is nothing pertaining to that Journal except what the Secretary records, and there can be nothing beyond that which should go upon the Journal. Therefore whatever members did outside of that, or whether they went from this chamber, or whether they went to dinner or went away, ought not to go upon the Journal, and we have no right to put it upon the Journal.

Mr. WEED—The gentleman from St. Lawrence [Mr. Weed] does not take the proper position. If members will admit that there was a recess, I will admit that it is not material to put it upon the record; but they say there was a recess in fact, but they deny it is proper that the fact should appear upon the record. The President *pro tem.* vacated the chair and left the room, and the members left the room, but the members here present will not allow it to go upon the record as an actual recess, as it really was in law.

Mr. TAPPEN—One word in response to the gentleman from Columbia [Mr. Gould]; I was in this hall in the morning session, and from then until seven there was no session and no person in the chair. But two or three members of the Convention were in the hall, and no business was done from two o'clock until half-past seven, when the Convention re-assembled. These are facts which nobody proposes to gainsay or deny. Now, in respect to the objection of the gentleman from St. Lawrence [Mr. Merritt], that nothing should go upon the Journal except what the Secretary chooses to put there. That Journal is to contain what is ordered to go upon it, whether it be the minutes of the Secretary or not. Whatever this Convention direct to be put upon the Journal should be put upon the Journal.

Mr. FOLGER—I move the previous question.

The question was then put on the motion for the previous question, and it was declared carried.

The ayes and noes were called for, and a sufficient number seconding the call, they were ordered.

The SECRETARY proceeded to call the roll.

The name of Mr. C. L. Allen was called.

Mr. C. L. ALLEN—I ask to be excused because I was not here, and do not know how to vote.

The question was put upon excusing Mr. C. L. Allen, which was declared lost.

Mr. BARKER—From the voices behind me I think that the members who are in contempt voted upon that last question.

The PRESIDENT—The Chair rules that they should not vote.

The name of Mr. C. L. Allen was called.

Mr. VAN CAMPEN—It seems to me that it is a very great hardship to compel a man to vote upon a question of which he has no personal knowledge whatever.

Mr. C. L. ALLEN—I do not know that I can say any more. I am entirely ignorant of the facts as to the question now called. I was not present in the room, and I do not see how I can vote with truth either yea or nay.

The PRESIDENT—The gentleman has already addressed those considerations to the Convention.

The name of Mr. Beals was called.

Mr. BEALS—I certainly beg to be excused from voting on this occasion. At the last session I did not appear before the bar of the Convention to render my excuse until the rule had been established by which, all under censure should be received in the Convention, and I feel conscientiously, sir, that this matter which has been entered into by the minority of this Convention was fundamentally wrong. I do not profess to understand parliamentary usage in this matter, but at least I believe myself to be correct in this, that those who are equally censurable with others, ought not to

Mr. ALVORD—I would like to know how the Journal is to be corrected agreeably to that statement?

The PRESIDENT—The Chair simply wishes the decision of the President *pro tem.*

Mr. POND—I would like to state my recollection in regard to this matter, and if I am correct, it may make some difference with regard to the correction of the Journal. I understood the President *pro tem.* [Mr. Folger] yesterday, when the hour of two o'clock arrived to declare the Convention in recess, and afterward, if my recollection serves me (it was a very exciting time, and very likely my recollection does not serve me), the gentleman from Onondaga [Mr. Alvord] asked the Chair, if the Chair had made such a decision, and according to my recollection, the Chair responded it had, and thereupon I left the chamber.

Mr. ALVORD—I merely wish to say, I did ask the President *pro tem.* whether he had made such a decision, and he distinctly said he had not.

Mr. BARKER—I rise simply to state, that my recollection is in accordance with the remarks of the gentleman from Ontario [Mr. Folger], who was the President *pro tem.*, and I think the Journal should be corrected in accordance therewith.

Mr. SCHELL—I recollect the fact, that at a certain time, the attention of the President *pro tem.* [Mr. Folger] was called to the rule under which the Convention was to act, and that was that a recess should be taken at two o'clock until half-past seven. At the hour of two o'clock it was announced that the time had arrived, and the President *pro tem.* left the chair, and the members dispersed, so that the fact is the Convention took a recess at two o'clock and re-assembled at half-past seven, when the President *pro tem.* again took the chair.

Mr. FOLGER—There is a slight inaccuracy, not so much of fact, as of the collocation of the statement of the gentleman from New York [Mr. Schell]. The President *pro tem.* did not announce the hour of two o'clock, and he made no announcement declaring a recess, and he did not leave the chair first, as might be implied by the phraseology of the gentleman from New York [Mr. Schell]. The members of the Convention had risen from their seats and had got into the passage ways, and some were going out, when the President *pro tem.* left the chair, and did not enter it again until half-past seven, and without calling the Convention to order, he inquired what was the further pleasure of the Convention.

The PRESIDENT—Does the gentleman [Mr. Folger] desire to move for a correction of the Journal?

Mr. FOLGER—I do, in that respect, and I offer the following as an amendment.

The SECRETARY proceeded to read the amendment, as follows:

When the point of order was taken, the President *pro tem.* stated that he would declare what had been the previous action of the Convention, and did state that it had been previously resolved that the Convention should take a recess at two P. M., and should re-assemble at half-past seven P. M. that he would not declare a recess.

Mr. WEED—I desire the fact to appear that there was a dissolution of this body at two o'clock, and that they did not come together again until half-past seven o'clock, which is a fact.

Mr. WAKEMAN—Yesterday I was occupying a place near the gentleman from Albany [Mr. A. J. Parker]. When it was two o'clock I moved a recess until half-past seven, and it was declared lost. Then there was a question raised by the gentleman from Onondaga [Mr. Alvord] as to what the Chair had decided.

Mr. ALVORD—I desired the President to say whether he had decided that we were in recess, and he distinctly said that he had not so decided.

Mr. WAKEMAN—That was so. My attention was called to it because it was within a minute or two of two o'clock, and the attention of the gentleman from Albany [Mr. A. J. Parker] was also called to it, to know what the effect would be if a recess were taken; and my attention was directed to the President *pro tem.* until we dispersed, and the President *pro tem.* did not declare a recess according to my recollection, but intimated that members could disperse and meet again at half-past seven o'clock, when business would be resumed, and under that we all dispersed.

Mr. A. J. PARKER—I recollect when the gentleman from Genesee [Mr. Wakeman] moved a recess to be taken until half-past seven, and that motion was declared lost by the President *pro tem.*, and a minute or two after when it was two o'clock, I called the attention of the President *pro tem.* to the rule which required we should take a recess until half-past seven, and I supposed he did declare a recess accordingly, and something was said which I supposed was an acquiescence in that rule; whereupon the Convention dispersed and assembled again at half-past seven. I suppose it is proper that the Journal should tell the truth, that we did disperse at two o'clock and re-assembled at half-past seven.

Mr. KETCHAM—I hope it may be made to appear on the Journal that there was a recess whether it was announced by the President *pro tem.* or not. I understood at the time that the recess was announced, but however that may be, I know that we took a recess with the doors locked, and we all got out of the house. We were pouring out of the house like a swarm of bees; out of the back door and windows, and I insist that the Journal shall show that we were not in session from two o'clock until half-past seven, and I would like to have it show how we got out.

Mr. POND—I move to add at the end of that amendment that we had vacated the chamber and re-assembled again at half-past seven.

Mr. WEED—I have an amendment in substance, the same as that which I have drawn out, which I ask to have inserted, that at two P. M. the Convention dispersed.

The SECRETARY proceeded to read the amendment, as follows:

"And that at two P. M. the Convention dispersed, the members left the chamber, and the President *pro tem.* left the chair and the chamber, and that the Convention re-assembled at half-past seven P. M., when"—

Mr. RATHBUN—I submit the gentleman is not entitled to vote unless permitted by the Convention.

Mr. HATCH—I did not ask to be excused.

The PRESIDENT—The Chair understands the gentleman did not ask to be excused.

Mr. RATHBUN—Then I move the gentleman should be advised that he is disorderly.

The PRESIDENT—The Chair did so advise him.

The name of Mr. Loew was called.

Mr. LOEW—I was not here yesterday, and have no personal knowledge of what transpired. I was away upon leave of absence, but from what transpired here this morning I am satisfied that the gentlemen did disperse, and I believe that fact is not denied, therefore I vote "aye."

The name of Mr. Reynolds was called.

Mr. REYNOLDS—I ask to be excused, as I was absent on leave and did not return until this morning.

The question was put on excusing Mr. Reynolds, and it was declared carried.

The name of Mr. L. W. Russell was called.

Mr. L. W. RUSSELL—I ask to be excused. Although I was present, I am unable to say from my own knowledge whether the President *pro tem.* left the chamber or not.

The question was put on excusing Mr. L. W. Russell, and it was declared lost.

Mr. L. W. RUSSELL—Then believing it to be the fact, as stated in the amendment, I vote "aye."

The name of Mr. Sherman was called.

Mr. SHERMAN—I ask to be excused from voting. I was not here yesterday between the hours of two and half-past seven, and consequently I have no knowledge of the facts which are involved in this question.

The question was put on excusing Mr. Sherman, and it was declared carried.

The name of Mr. M. I. Townsend was called.

Mr. M. I. TOWNSEND—I ask to be excused. I was present in the Convention, and know that between seventy and eighty members of this Convention know the facts to be precisely as contained in the proposed amendment. I further know that the rules of this Convention would have rendered the acts of this body between two and half-past seven nugatory, and irregular, and disorderly, had they continued in session or not. I find men whose parliamentary knowledge is very great, mine being none at all, assume that the keeping of this matter off the record is of such importance as renders it necessary to spend a large portion of the morning when we have got a quorum here, and therefore I fear that I may be doing a great wrong in voting to put the truth upon the record, and I ask to be excused.

The question was put on excusing Mr. M. I. Townsend, and it was declared lost.

Mr. M. I. TOWNSEND—I vote "aye."

Mr. BEADLE—My name has not been called, and I rise to inquire why.

Mr. BEADLE—I suppose that under rule 33, which says there must be a quorum—

The PRESIDENT—The gentleman is in contempt.

The PRESIDENT—The Chair will receive the gentleman's reason at the proper time.

Mr. BEADLE—Is it not a privileged question.

The PRESIDENT—It is a privileged question, but not so far privileged as to override the call of the roll.

The SECRETARY completed the call of the roll, and the amendment of Mr. Pond was declared carried, by the following vote:

*Ayes*—Messrs. Ballard, Barnard, Barto, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Carpenter, Champlain Chesebro, Cochran, Corbett, Corning, Daly, Eddy, Endress, Hale, Harris, Hatch, Hitchman, Jarvis, Ketcham, Krum, Landon, Loew, Mattice, Merwin, Morris, A. J. Parker, C. E. Parker, Pond, Potter, President, L. W. Russell, Schell, Schoonmaker, Schumaker, Seymour, Silvester, Sheldon, Smith, Strong, Tappen, M. I. Townsend, S. Townsend, Weed, Young—49.

*Noes*—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Barker, Bell, Case, Duganne, C. C. Dwight, T. W. Dwight, Ely, Field, Flagler, Folger, Gould, Graves, Greeley, Hadley, Hammond, Hitchcock, Houston, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Ludington, Merritt, Opdyke, Prindle, Prosser, Rathbun, Root, Rumsey, Seaver, Spencer, Van Campen, Van Cott, Wakeman, Wales, Williams—40.

Mr. SHERMAN—By the vote just taken, the Convention has virtually declared that the proceedings under the call last evening were irregular.

The PRESIDENT—The Chair will remind the gentleman that the pending question is the amendment proposed by the gentleman from Ontario [Mr. Folger], as amended by the gentleman from Saratoga [Mr. Pond].

Mr. LAPHAM—I move a further amendment.

Mr. WEED—I rise to a point of order that the previous question has been ordered.

The PRESIDENT—The point of order is well taken.

The question was put on the amendment of Mr. Folger, as amended on motion of Mr. Pond, and it was declared carried.

Mr. SHERMAN—I said that by the vote just taken, the Convention had virtually decided—

The PRESIDENT—The Chair will state that the pending question now is, are there any amendments to the Journal? There being none, the Journal will be approved.

Mr. SHERMAN—The Convention having virtually decided that the proceedings of last night were irregular, I move that the vote on the amendment, which was adopted on my motion, be reconsidered.

The PRESIDENT—The Chair will state that the Journal having been approved, and showing the fact of a recess being taken at two o'clock, by that recess the call and all proceedings under it were terminated.

Mr. WEED—Is it not in order, then, to expunge that portion of the Journal by which it appears that myself and other gentlemen came in under the custody of the sergeant-at-arms?

The PRESIDENT—The Chair has decided the Journal correct.

Mr. BELL presented the petition of Leander Douglas and thirty-two other citizens of the town of Lyme, asking the right to catch fish in the



The PRESIDENT—The Chair will inform the gentleman from New York (Mr. Day) that by the rule he should move the committee under the head of resolutions. This memorial will be on the table, and at the proper time will be received.

Mr. FRANCIS presented a petition of forty citizens of New York asking a constitutional provision prohibiting appropriations of the public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. BALLARD presented a petition on the same subject.

Which took a like reference.

Mr. M. H. LAWRENCE—I present the petition of one hundred and twenty-five citizens of Bath, Steuben county, asking that in the Constitution about to be submitted, there be also submitted a separate clause prohibiting the sale of intoxicating liquors to any person or persons as a beverage, and if adopted by a majority of votes at said election, it shall become a part of the said Constitution.

The petition was referred to a select Committee on Adulterated Liquors.

Mr. DUGANNE presented the petition of the Rev. John P. Brackett and one hundred and fifty-five others, against the donations of public moneys to sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. FOLGER presented the petition of Au-

thorities in the State of New York, and in the several counties of the State, to the effect that the same be referred to the Committee on the Powers and Duties of the Legislature.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. HATH presented the petition of the members of the Synod of the Presbyterian Church of Albany against sectarian institutions.

Which was referred to the Committee on the Powers and Duties of the Legislature.

Mr. DUGANNE presented the petition of S. Kaufman, Dr. Frederic S. Smith and three hundred and twenty-one others against preliminary legislation.

Which took a like reference.

Mr. BARKER—I rise to a point of order. I believe after the Convention have adopted a resolution providing for the morning hour up to 11 o'clock, and then to go into Committee of the Whole—

The PRESIDENT—The Chair understands from the Secretary that no such rule has been adopted.

The PRESIDENT presented a communication from the Auditor of the Canal Department in answer to a resolution of the Convention, adopted July 1st, in relation to the Champlain canal.

Which was referred to the Committee on Canals, and ordered to be printed.

The PRESIDENT presented the following communication from the Regents of the New York State University:

UNIVERSITY OF THE STATE OF NEW YORK,  
OFFICE OF THE REGENTS,  
ALBANY, August 6, 1867.

To the Hon. Wm. A. Wheeler, President of the Convention for revising the Constitution:

SIR: The fourth anniversary meeting of the University Convocation of the State of New York,

consisting of the head officers and professors of the colleges, academies and other institutions of learning in the State, subject to the visitation of the Board of Regents, will be held at the lecture room of the State Agricultural Society in this city, commencing this day, and is expected to continue three days.

The members of the Convention over which you preside are invited to attend the sessions, and will be cordially welcomed by the officers and members of the Convocation.

Very respectfully yours,

JOHN V. L. PRUYN,  
*Chancellor of the University.*

S. B. WOOLWORTH,  
*Secretary.*

Mr. E. BROOKS — I move that this invitation be accepted.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. AXTELL — I ask leave of absence for Mr. Clinton, of Erie, for to-day, who is unexpectedly required to be absent.

The question was put on granting leave of absence to Mr. Clinton, and it was declared carried.

Mr. HALE — I ask leave of absence for myself for one week from to-day. The reasons are owing to the necessity of being home on account of business of importance to the people of the locality I represent.

The question was then put on granting leave of absence to Mr. Hale, and it was declared carried.

Mr. AXTELL — I ask leave of absence for this week, for my colleague, Mr. Cheritree, on account of sickness in his family.

The question was then put on granting leave of absence for Mr. Cheritree, and it was declared carried.

Mr. SMITH — I ask leave of absence for myself, to-morrow and the day following, to transact some business which cannot be deferred.

The question was then put on granting Mr. Smith leave of absence, and it was declared carried.

Mr. HAMMOND — I ask leave of absence for my colleague, Mr. Farnum, who will necessarily be detained until Thursday, having been telegraphed to return home.

The question was put on granting Mr. Farnum leave of absence, and it was declared carried.

Mr. SMITH, from the Committee on Town and County officers, etc., submitted the following report:

The Committee on Town and County Officers, other than judicial, their Election or Appointment, Tenure of Office, Compensation, Powers and Duties, respectfully submit as a substitute for Article X, of the present Constitution, the following:

#### ARTICLE —.

SECTION 1. There shall be elected in each county by the qualified voters therein, at the time of holding general elections, a sheriff, county treasurer, county clerk, county supervisor, and as many coroners as may be prescribed by the Legislature; who shall hold their offices respectively for the term of three years, unless sooner removed by competent authority. Sheriffs shall hold no other

office during their incumbency, and shall not be re-eligible, act as under-sheriff or deputy for the succeeding term; but the retiring sheriff shall finish all business remaining in his hands at the expiration of his term, for which purpose his commission and official bond shall continue in force. They may be required to renew their security from time to time, and in default of giving such new security, their offices shall be deemed vacant. The county shall never be responsible for their acts. The Governor may remove any officer in this section mentioned, for incapacity, neglect of duty, malfeasance, intemperance, turpitude or crime, first giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

§ 2. There shall be appointed in each county by the Governor, a district attorney, who shall hold his office for the term of three years, unless sooner removed by competent authority. The Governor may remove the district attorney for incapacity, neglect of duty, malversation, intemperance, turpitude or crime, first giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

§ 3. There shall be elected in each organized town by the qualified electors therein, at such time as the Legislature may prescribe, one supervisor, one town clerk, one collector, one or three assessors as the electors may determine, and as many commissioners of highways and overseers of the poor as may be prescribed by law. The supervisor shall hold his office for the term of two years, and the other officers in this section mentioned for the term of one year, unless sooner removed by competent authority.

§ 4. All county and town offices (except judicial) which may be in existence on the adoption of this Constitution, shall thereafter continue, with the powers, duties, and incidents thereto pertaining, until abrogated or modified by law; and the incumbents of said offices, and also the several officers mentioned in this article, shall retain the powers, and perform the duties pertaining to their respective offices at the time of the adoption of this Constitution, until the same are changed or modified by law. The Legislature may, by general laws, create such new town and county offices, not inconsistent with the provisions of this Constitution, as the public weal shall require; abrogate such town and county offices as are not specifically established by this article; regulate the election of all officers named in this article, and provide for the election or appointment of such as are not herein named; prescribe the powers and duties of all county and town officers, except judicial; provide for the giving of security by any of said officers for the faithful discharge of their duties; provide for the removal of all county and town officers (except judicial) for whose removal provision is not otherwise made in this article; declare the cases in which any such office shall be deemed vacant, and provide for filling vacancies in office; but in case of elective officers, no person appointed to fill a vacancy, shall hold his office by virtue of such appointment, longer than the balance of the term in which such vacancy occurs.

§ 5. All county and town officers shall reside within their respective counties and towns, and

shall keep their respective offices at such places therein as may be directed by law. And all such officers shall be subject to indictment for malfeasance, misfeasance or neglect of official duty; and upon conviction thereof, their offices shall become vacant.

§ 6. The county supervisor and town supervisors chosen in each county, shall constitute a board to be known as "The board of supervisors of the county of ———," by which name they may sue and be sued; and in which capacity they may make and use a common seal, and enact ordinances and by-laws not inconsistent with the laws of the State. They shall meet statedly, at least once in each year, at the county seat of their county, and may hold special and adjourned meetings; and shall have such powers, and perform such duties as a board, as may belong to and devolve upon boards of supervisors at the time of the adoption of this Constitution, or as may thereafter be prescribed by law. They shall appoint a clerk, who shall keep a journal of their proceedings, and transact such other business pertaining to his office as may be by them or by law required, and whose compensation shall be fixed by them, and paid from the county treasury.

§ 7. The board of supervisors of each county, a majority of whom shall constitute a quorum, shall, under such general regulations as may be prescribed by law, have exclusive legislative and administrative power over, and superintendence and control of, such local and internal affairs and fiscal concerns within their county as are not otherwise provided by this Constitution; including the establishment, construction, regulation, and discontinuance of roads, public landings, ferries and bridges, except over navigable streams; the establishment, incorporation, regulation, and discontinuance of plank, turnpike, and macadamized roads, and horse railroads; the raising of money by loan or tax for town, village, or county purposes; the confirmation of the proceedings of towns and incorporated villages, and of county, town, and village officers (other than judicial); the relief of county, town, and village officers (other than judicial), from penalties incurred in the discharge or neglect of official duty; the purchase, management, and sale of real estate and personal property, for the use and benefit of the county; the erection of new towns and wards, changing the names thereof, and the alteration of town and ward boundaries; the widening, deepening, straightening, and cleaning of the channels of streams (except navigable streams), and the drainage of swamps and marshes; the correction of erroneous and illegal assessments, and refunding of moneys collected or paid on such assessments, the compensation of town and county officers, except supervisors, which shall be fixed by the Legislature; the care and support of town and county poor; together with such other matters of a local and internal character as the Legislature may prescribe; and also all other matters in regard to which boards of supervisors may have jurisdiction at the time of the adoption of this Constitution, subject to such changes and modifications as may thereafter be made by law, in accordance with this Constitution.

§ 8. The county supervisor shall be president of the board of supervisors, and shall have all

the powers, and perform all the duties pertaining to the office of chairman of the board at the time of the adoption of this Constitution, and such as may thereafter be prescribed by law; *Provided, however,* That he shall not be entitled to vote upon any question before the board, except in case of a tie, when he may give the casting vote. All acts and resolutions of the board shall, upon the passage thereof, and during the session of the board at which the same were passed, be signed by the president, with his approval or disapproval thereof; and no act or resolution thus disapproved shall be valid unless upon reconsideration of the same, a majority of all the members elected shall agree to its passage notwithstanding such disapproval.

§ 9. The Legislature may, by law, provide for an increase and equalization of representation in the boards of supervisors, by an election of representative supervisors from towns, villages and cities, with such powers and duties as members of said boards, but not otherwise, as may be prescribed by law.

#### EXPLANATION.

Your committee have deemed it unwise to propose many changes in the tenure of office, or in the powers and duties of town and county officers.

Most of these officers are our common law inheritance. Their names and functions are familiar to the people—their powers, duties, limitations, and responsibilities, well defined by a long series of adjudications. No change should be made which does not promise advantages, clearly and decidedly outweighing the inconveniences that necessarily attend any change in the organic law of a State. But, in obedience to the public demand, and in accordance with their own judgment, your committee have incorporated in the foregoing proposed article the following new features, to-wit:

1. Additional and exclusive legislative and administrative jurisdiction is given to boards of supervisors, in relation to local and internal affairs, and fiscal concerns within their respective counties. This change, it is believed, is imperatively demanded. The vast and varied local interests of the State annually press with great severity upon the Legislature. A very large proportion of its acts are of a strictly local character, in which the people at large have no direct interest.

Members are naturally more interested in the affairs of their immediate constituents, who made them, than in the interests of the State at large; and hence, general legislation is pushed aside to give place to local and private schemes. It often happens that the merits of these schemes are known only to the local members who have them in charge, and who, perhaps, are employed as attorneys or agents to engineer them through the Legislature for a consideration. Moreover, these private and local schemes give occasion for the exercise of that peculiar species of legislative tactics known as "log-rolling." Worse than all, they give employment to that class of venal go-betweens known as "lobbyists," who annually infest the Legislature, and "ply their vocation" with a skill, perseverance and success worthy of a better cause. The change proposed would



transfer local questions to local boards, where they could be properly ventilated and understood. It would greatly lessen the facilities for corruption, and leave the Legislature to pursue with honesty and deliberation, its legitimate business of general legislation.

2. This large increase of power in the local boards, suggests the propriety of some check upon hasty, inconsiderate and corrupt legislation.

To supply this want a county supervisor is proposed, who is to act as president of the board of supervisors, have a casting vote in case of a tie, and a veto power.

Elected by the whole county, he would represent the county, and not any particular locality or interest.

From the importance and dignity of the office, it may reasonably be supposed that it would be filled by men of character, who would bring ability and experience to the aid of the board in the discharge of its important duties. Sitting as a member of the board, and listening to its discussions, he would be prepared to promptly interpose a veto in cases demanding his interference.

3. The inequality of representation existing in boards, as at present constituted, has caused considerable complaint. For example, Watervliet, in the county of Albany, with a population of 27,000 and upward, has only one representative in the board; while several towns in the same county, with a population of less than 3,000, have each one representative, and power in the board equal to the populous and wealthy town of Watervliet. In the county of Fulton, one town has a population of about 10,000, and another of about 600, yet they are equal in representation and power in the board. This inequality exists to a greater or less extent in most of the counties of the State; and with an increase of legislative power in the board it would be more sensibly felt.

To remedy the difficulty, authority is conferred upon the Legislature to provide for an increase and equalization of representation, by an election of representative supervisors from towns, villages and cities, to act as members of the county boards. This provision would cure the evil complained of, without disturbing the present familiar system. Town supervisors would exist as before, with the same undivided powers and duties. They would act in their individual and independent capacity as town supervisors, and also as members of the county board of supervisors; while the representative supervisors would act only as members of the county board.

4. The term of supervisors is increased from one to two years. It was thought that the increased duties and importance of the office under the proposed change would, for obvious reasons, make a longer term desirable.

It will be observed that the leading and most important of these changes is *the transfer of local legislation from the Legislature to the boards of supervisors*. The others are mainly subordinate to and complementary of this. As a whole they form, in connection with existing provisions, a complete system, which it is thought will meet the public demand without essentially disturbing the present order of things, or producing any serious inconveniences.

5. The district attorney is to be appointed by

the Governor. His office is not representative, and there is no good reason why it should be elective by popular vote. On the contrary, there are cogent reasons why it should be removed as far as possible from the political arena, and its incumbent made independent of the favor, caprice and resentment of those most likely to receive his official attentions.

It is not to be expected that a district attorney will be zealous in the prosecution of those to whom he owes his position; and there is too much reason to believe that, under our elective system, many offenders go "unwhipped of justice" solely for the reason that they have a "friend at court" in the person of the prosecuting officer.

The appointive system would not only remedy this evil, but secure a higher grade of incumbents. Grant that many able and worthy men fill the office under the elective system, it is true, nevertheless, that in many cases men totally unfit for the position, intellectually, morally, and professionally, are foisted into office. This result is produced by a skillful manipulation of the political wires, the power of caucus, a corruption fund at the polls, and the votes of those who desire immunity from the penalties of violated law.

The high position of the Chief Executive of the State, his personal responsibility, and the pride he would naturally feel in the success of his administration, would insure a judicious exercise of the appointing power; and there is good reason to believe that the change proposed would result in a purer, and more efficient administration of criminal law.

These are the only material changes that a majority of your committee have felt at liberty to recommend. And, in this connection, it may be proper to state that there was not entire unanimity in the committee on the question of the appointment of district attorney, a minority preferring his election by the people.

The other provisions of the article submitted, embrace substantially the features of the present Constitution and laws upon the same subject, so combined and expressed as to present in our written Constitution a complete system.

The subject assigned to your committee is so intimately connected with several others, that they have found it difficult to discharge their duties without trenching, or seeming to trench, upon ground assigned to other committees. They have endeavored to avoid this as far as practicable; but, doubtless, more or less modifications of the article reported by them will be required to harmonize it with other parts of the Constitution as they may be reported by committees, or adopted by the Convention.

Your committee having performed the duty imposed upon them, ask to be discharged from that further consideration of the subject, and of all matters relating thereto which have been referred to them.

ALBANY, August 6, 1867.

H. E. SMITH, *Chairman*.

M. BICKFORD,

ABRAHAM LAWRENCE,

O. H. P. KINNEY,

Except as to the appointment of Dist. Attorney.

W. B. SHELDON.

The undersigned, while uniting in the above report, nevertheless dissents from so much of the report as relates to the term of office of supervisors, and to the election of county treasurers. I prefer one year as the term of office of supervisors, and the appointment of county treasurers by the boards of supervisors.

M. BICKFORD.

Except as to the mode of appointment of district attorneys, and also further as to the election of town officers, believing that it will be an improvement to elect one or more assessors in each county as county officers.

JOHN P. ROLFE.

The PRESIDENT — The report will be referred to the Committee of the Whole and ordered to be printed, and, if there is no objection, the committee will be discharged from the further consideration of the subject.

Mr. SHERMAN — In connection with the report I offer the following resolution which I desire to be sent to the Committee on Printing.

*Resolved*, That there be printed of the report of the standing Committee on Town and County Officers other than Judicial, etc., recommending an article of constitutional amendment, two thousand extra copies for the use of the Convention.

Mr. KETCHAM — I offer the following resolution.

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the proceedings recorded upon the Journal declaring certain members of this Convention in contempt at the session of the Convention held at half-past seven P. M. on the 5th day of August, 1867, and the recitals in said Journal, declaring that certain members were brought to the bar of the Convention under charge of the sergeant-at-arms and excused, etc., be expunged from the Journal of the Convention.

Which was laid over under the rule.

Mr. KETCHAM — I offer the following resolution:

The SECRETARY proceeded to read the resolution as follows:

*Resolved*, That the street between the Capitol and Congress Hall be closed, and kept closed during the further sessions of the Convention.

Mr. KETCHAM — I ask for the immediate consideration of that. It is a question of privilege, and it is utterly impossible by reason of the constant rattling of carriages, for us in this part of the chamber, to hear anything that goes on in the Convention. The street is not a public street, but it belongs to the State, and for this reason, I ask it be closed.

The question was put on the resolution of Mr. Ketcham, and it was declared adopted.

Mr. DALY — Instead of asking a special committee with reference to the petition which I have the honor to present, in reference to personal representation, I ask for the reference to the Committee of the Whole having that subject in charge.

There being no objection the petition took the reference requested.

Mr. RATHBUN — I move to reconsider the

vote by which the resolution in regard to the closing the street was adopted.

The motion to reconsider was laid on the table.

Mr. LAPHAM offered the following resolution:

*Resolved*, That the roll of delegates be called after the reading of the Journal, each day and the names of all delegates absent without leave shall be entered in the Journal for the day.

Mr. WEED — I rise to debate that resolution.

The resolution giving rise to debate was laid over under the rule.

Mr. TAPPEN — I offer the following resolution.

*Resolved*, That the sessions of this Convention on Mondays, commence at half-past seven P. M.

Mr. GREELEY — On that I ask the eyes and noses.

Mr. RATHBUN — I rise to a point of order. There is a standing rule on that subject now — that the Convention shall meet on each succeeding Monday in the evening.

The PRESIDENT — The Chair will accept the explanation of the gentleman, [Mr. Rathbun]. The rule has been created in its absence. That being the fact the resolution is not now in order.

Mr. TAPPEN — I am not aware that this Convention by any rule has adopted an hour for the evening session on Monday.

Mr. SHERMAN — I think the gentleman from Cayuga [Mr. Rathbun] is mistaken as to the adoption of any rule. There is an order adopted which specifies it shall be the order of the Convention until otherwise ordered, regulating the sessions on these days, but no rule has been adopted in that manner.

Mr. RATHBUN — Then it must be attacked in a different mode.

The PRESIDENT — The Chair understands the resolution of the gentleman from Oneida [Mr. T. W. Dwight] does not conflict with the adoption of this resolution.

Mr. SHERMAN — I ask the reading of the resolution which was adopted on Friday.

The resolution giving rise to debate, was laid over under the rule.

Mr. GREELEY — I move the following resolution on the same subject as that of the gentleman from Ontario [Mr. Lapham]:

*Resolved*, That the roll of the Convention be called each day directly after the reading of the Journal, and every member who shall appear to be absent without leave shall thereupon be fined six dollars, to be deducted by the Comptroller in paying his compensation.

The resolution giving rise to debate, was laid over under the rule.

The Convention resolved itself into the Committee of the Whole on the report of the Committee of the Legislature, its Organization, etc., Mr. FULLER, of Monroe, in the chair.

The CHAIRMAN announced the pending question to be upon the amendment offered by Mr. Ballard to the amendment offered by Mr. E. Brooks, to the article reported by the committee.

Mr. BALLARD called for a division of the question.

Mr. FLAGLER — I wish to inquire if the first part of the proposition, providing for thirty-two districts, is adopted, and the other part in regard to

making an apportionment, is voted down, whether it would be in order then for me to move the substitute which I indicated the other day.

The CHAIRMAN — The Chair is of the opinion it will then be in order.

Mr. BALLARD — In calling for a division of the question, I wish it to be taken on the first sentence of the amendment, the one dividing the State into thirty-two districts.

Mr. BARKER — If the committee are now about to come to a vote on the amendment of the gentlemen from Cortland [Mr. Ballard], I wish to make a statement. There has been considerable feeling manifested against the report of the committee in regard to the manner in which they have apportioned the districts of the State. I wish to say that the members favoring the large districts, in making this vote, will regard it as voting for the principle of the large districts, and if it shall be sustained, the manner of dividing the State, if we divide it at all, it will be considered applicable, and gentlemen will vote upon the principle of large or small districts.

Mr. SEYMOUR — I wish to inquire of the Chair whether it would be in order to pass over this resolution, and consider other parts of the report?

The CHAIRMAN — The Chair is of the opinion that it is not now in order, that the Convention having decided in what order the Committee shall proceed, the committee cannot depart from it without the permission of the Convention.

Mr. S. TOWNSEND — As I understand the motion, it is whether our districts shall be large or small. Before voting affirmatively upon the large district system I would prefer that some modification should be made of the first section, which has been passed over rather informally. I would ask whether the Chair thinks a proposition relating to that would be now in order.

The CHAIRMAN — The Chair is of the opinion it is not in order.

Mr. S. TOWNSEND — I will detain the Convention but a minute in reading what I propose, to add to the first section.

Sec. 1. Every elector of this State shall be eligible for any of the offices herein named.

The supreme legislative power of this State is vested in a Senate and Assembly.

The Legislature at its first session after the adoption of this Constitution, and from time to time thereafter shall confer upon the several boards of town, county, village and city officers, the necessary and appropriate powers of legislation and administration for the local government of their several districts.

I will further remark that this is giving force to the dormant seventeenth section of the old Constitution, which is in these words: "The Legislature may confer on the boards of supervisors of the several counties of the State, such further powers of local legislation and administration as they shall from time to time prescribe." I will only remark that another committee has just reported a code in reference to this subject, which apparently requires some such form in the act we are about to perfect. With these remarks I submit it to the Chair.

The CHAIRMAN — It is not now in order.

Mr. S. TOWNSEND — I will move it when it

is in order. I am prepared to vote negatively on the large district system until I know something about it.

Mr. EVARTS — I hope, Mr. Chairman, that the sense of the Convention will be intelligently and deliberately expressed upon the principle of the organization of the Senate, now fairly before it, separated entirely from any embarrassment or dissatisfaction that may find place in the minds of any members in regard to the actual or even the probable apportionment of the Senate through the State. I hope also, sir, that this sense of the Convention will be expressed upon this general principle, separated entirely from any predilections or aversions that may find place in the mind of any member in respect to the somewhat novel mode of taking the suffrage, which is included in the proposition of the gentleman from Westchester [Mr. Greeley]. For that novel mode, concerning which much may be said that is interesting, and much may be said that is useful, can be as well applied to a system which divides the State into eight senatorial districts as into fifteen; and on the other hand those of us who have committed ourselves to the large districts, are not necessarily nor finally bound to a specific number of eight, if good reasons can be given why, nevertheless, there should be a somewhat larger number of districts. The proposition, as I take it, sir, is this, whether in arranging for the use of the suffrage, in the election of one of the houses, there shall be an effort at this compound senate district which should enable, in the arrangement of that branch of the Legislature, these two important ideas to be carried out. First, that there shall be an extension of the area of the suffrage from which, by election, these Senators are to derive their power, that will reserve the representation in that branch of the Legislature from localization and control by minor and limited arrangements of every kind. Secondly, whether by this compound district system, and from the introduction of the number of four Senators as representatives of the same constituency, there may be a convenient and a symmetrical and a reasonable mode for securing greater permanence and continuity in the constitution of that branch of the Legislature. The importance of this cannot be over-estimated, in my judgment. For it will be observed at once that, although it is possible by the single district system to preserve, in a modified form, the continuity of the existence of the Senate by providing that only in certain parts of the State, once in each year, elections shall take place, and thus the whole State be consulted only once in four years, yet that is much the best mode of securing the continuity of the representation in the Senate which appeals to the whole State and to every voter in the State at each annual election, to give his suffrage in respect to the member of the Senate that is to be chosen. I think, therefore, that all gentlemen who favor this longer term, and this provision of continuity in the body by separating the election into classes, must feel that the compound system gives so much the more real and thorough opportunity for the carrying out of these ideas as to lengthening the term, than the separation of the single districts into classes for annual election. The



voters, under this latter system, must feel that they are excluded, except once in four years, from any voice in the constitution of the Senate; whereas, under the system by which the districts are large, all the voters cast their votes for the Senator representing that district annually. One Senator comes to be elected every year, and every voter in the State votes every year in respect to the constitution of the Senate. Now, Mr. Chairman, I am disposed to think that the question before the Convention is one of the most important, both in the minds of the members and in the feelings, wishes, and thoughts of the people of this State, that is likely to engage our attention. I believe that the real public demand for a Convention, and a revision of the Constitution, attaches itself more to an interest in and a dissatisfaction with the condition of the Legislature of the State, and of the Judiciary of the State than to any other topics that are included within the purview of the Constitution. I agree that, in regard to a certain important matter of administration, that is for the arrangement of the government of cities of large population, there is certainly great interest felt, and it is one of the most difficult and important subjects that is to come before us. But that is, after all, but a question of administration, and in regard to the Legislature and the judiciary, I think there is a conviction in the minds of the people of this State that there needs to be an elevation, a conformation, a purification of both of those fundamental departments of this government, as they are of all free governments. Now, as I understand the propositions presented and enforced here in favor of a single district system for the Senate, they class themselves under one or the other of these two heads; first, that of contentment, for there is no evil to be corrected; and, second, of despair of correcting it, if there be an evil that needs correction. If I agreed with my friend from Rensselaer county [Mr. M. I. Townsend] opposite me, who so justly connects wisdom with gray hairs, that there was nothing in the constitution of the Senate that unfavorably contrasted with the body as it was arranged and filled under the old Constitution, I would agree with him that we should not experiment in mere circumstantial changes having no necessity. I will agree that changes without substance are not desirable. Changes without real and grave reasons even are not to be encouraged. But I must appeal to the expression in every form, as it comes from members of this Convention, to every channel of public sentiment, whether at the hustings or in the newspapers, whether in the legislative bodies themselves or in the deliberations of independent organizations, of citizens who seek some remedy for the ills under which we suffer, that the condition of the Legislature is not satisfactory. I shall spend no more time upon this proposition than to say, that that gentleman was unfortunate in the single point of comparison, to which he attracted the attention of this body, between the old Senate and the new. Corruption does not exist in organizations, it exists in individuals. It exists in our human, imperfect condition. When he says that corrupt men were elected under the old

system as well as under the new, he touches nothing but this imperfection of our nature, and we come to the point which alone institutes comparison between the two organizations, when we inquire whether the old organization rejected the intrusion of corruption, and whether the new one cherishes and retains it. There is the point; that the only instance of corruption finding place in the old Senate, adduced by the gentleman, was evidenced by the expulsion of Senators inculpated. But who has seen anything like action tending in that direction in the body as composed under the present system of election? I say, then, that, talking as we are, not of human nature, which we cannot remodel, but of organization which we can, and are called upon to remodel, the argument only is, that the old organization not only tended to exclude, but actually expelled impurities from it. Now, Mr. Chairman, if it be conceded that we need to pay some attention to the organization of the Legislature, in order that what is strong and pure may be confirmed, and what is weak and corrupt may be rejected, what modes have we at our command? Manifestly, within the limits of the proposition, nothing but a change of the basis of the suffrage, which no one professes, and which certainly I do not desire, or a prolongation of the term, or a remodeling of the district of suffrage. What have we within our power with regard to the remodeling of the district of suffrage but the question of an enlargement of the district or of the retention of the present single district? What have we, then, but this precise question before us, and this proves what I have stated before, that beyond the argument that the Senate is satisfactory, there is no other argument for the retention of the present system than of despair of making it better, however much it needs improvement. Is there any escape from this proposition? It seems to me not. The gentleman from Kings [Mr. Bergen], himself so pure and honest, and representing, in his opinion, a region free from corruption, gives us what is supposed to be an axiom of moral or political philosophy. The gentleman says that the stream cannot rise higher than its fountain. I am not disposed to think we have any such certainty in the movement of moral and political influences as that which controls this physical law, with which the analogy is suggestive. But, sir, does not the gentleman know and feel that, though the stream cannot rise higher than the fountain, it may fall much lower, and that in its course it may imbibe many contaminations that it does not derive from its source? We cannot remodel society. We cannot restore human nature from its depravity. What we are occupied with is the practical considerations of what is within our power, and what is attributed to our duty. This power and this duty are limited to provide an organization by which, if the fountain be pure, the stream shall be kept as high and as pure as the fountain. These being the limits, then, within which we act, is there anything in this proposition that, after all our efforts to attain the benefits which, theoretically, are conceded may be derived from a larger constituency, yet practically, it will all fall back into the

control and routine of local machinery. This, Mr. Chairman, is the argument of despair. This is an abdication of all effort, of all will, of all courage, of all sagacity, of all prudence, on our part, and to leave the evil as it is, as a necessary consequence of the arrangement of our society, and, so, remediless. Now, sir, is it not apparent that if you, in your organization, lay out a system according to which, upon its fair working, there is an opportunity for the suffrage, and an opportunity for the public service, to bring the representation to a higher level than it occupies upon the existing system; and if the history of the State enables a practical comparison between the standard, as it was reached and maintained under the large district system, and the standard as it has been reached and maintained under the small district system, that if this test of experience and the teaching of reason, we can bring to it, both show us that there is an opportunity for better influences and for better results under the large district system, we do our duty, and we do but our duty, when, under the combined instruction thus given to us by experience and reason, we adopt the system of large districts. I will agree that the fundamental difficulty, which our form of government is no more free from than any other, that the selfish objects of those who desire to govern, not for the public good, but for their own share in the private advantages of government, will attack every form of organization, will invade every method and style of the public service, and will constantly require the persistent efforts of all good men to keep up the standard of public and political morality and action to a level suitable to the true service of the State. But, it is said, in the conventions which shall nominate for the large senate districts these influences of locality will manifest themselves in the presence and efforts of the delegates. That is true. But in the present system there is no check upon the localizing influence, for local delegates constitute the whole body in the single districts to pass upon nominations. If there be anything in this arrangement of the large districts in the particulars to which I now ask attention, it is that, although local arrangements are likely to follow, and cannot be wholly prevented, yet every part of the district is able to hold the rest to the condition that, in consulting the fair share of local representation, they, nevertheless, are to furnish candidates that shall be acceptable throughout the senate district, and that may be fairly and properly accredited with due pride and confidence by the whole district as worthy to represent the whole. It being established, therefore, that in the primary and nominating conventions we may gain something in their action of a more liberal and elevated character, let us see whether these better Senators, when once chosen, are not better situated, in the largeness of their constituencies, to serve the general public interest; whether they do not gain a larger area of independent, disinterested, intelligent observers of their senatorial course, upon whom, perhaps, they may fall back for vindication, and, if need be, for re-election; whether a Senator who, after he is chosen, shows himself inadequate to his position

as a representative of the large constituency, but serving always the selfish and narrow views of the local interests of his personal residence, will not find that this desertion of duty is visited upon him by the resentment and the rejection of the large constituency.

At this point the gavel fell, twenty minutes having expired.

Mr. POND — So far as the report of the majority of the committee proposes to increase the compensation of members of the Legislature, it has my unqualified assent. In my judgment very many if not the greater portion of the evils complained of as resulting from the present system are properly traceable to the fact, that members of the Legislature are not now provided with an adequate compensation. In theory a rule that requires the representatives of the people, to perform the public business, at their own expense comparatively, in addition to the time necessarily devoted to that object, is a vicious one, and cannot be defended on any satisfactory principle. There is no reason why a private individual should be selected to do the business of the State without receiving a just and adequate compensation. The people are able to discharge all just claims upon them. The State is neither a mendicant nor a miser, that any citizen devoting his time and performing labor in her behalf should do so to any extent gratuitously; and should such a rule universally obtain, the result would be to impose the obligation of holding office and discharging the duties incident thereto upon the wealthy class of citizens, thereby creating a species of moneyed aristocracy—a kind of privileged class—the existence of which is wholly inconsistent with our free institutions. The only alternative to this would be the choice of men for legislators not able pecuniarily to bear their own expenses at the State capital, and the necessary result of that system would be such official action on the part of the members as to supply by the drippings of unclean legislation the want of an adequate compensation. In practice, too, such has been the result, if we can correctly judge from the almost unanimous voice of the people and the press upon this subject. Nor is this all. In this country, where there is no aristocracy of wealth, but where very nearly every man is practically as well as theoretically the "architect of his own fortune," no man having important business of his own, no man of energy or of enterprise, will be willing to surrender his own business, neglect his own affairs, and voluntarily engage in the business of the State, and devote his time and talents to the good of the public at his own expense. It is apparent that such a principle would operate disastrously upon the best interests of the State. Indeed it has so operated in practice. The man who has nothing else to do, is the one who can attend to politics and run party conventions, and thus manage and control elections. The effect has been to throw a class of men into the Legislature, not able in fact to work without pay, and hence, it is to be feared, too much of bad and corrupt legislation has been the result. I repeat, much of this will be avoided by adopting the proposition of the committee in respect to the compensation of members. But the

committee go further. They propose to return from the single district system for the election of members of the Senate, adopted in 1846, to the larger district system substantially in existence at that time, and which was then abrogated. Now, first, is this right? Second, if right is it expedient? I am constrained to say, that in my judgment, it is neither right nor expedient. First, as to the right. It is proposed by the committee to divide the State into eight senate districts, instead of thirty-two as at present existing, and organized, from which four Senators are to be chosen, as provided in the article submitted by them, except in the first district, which is accorded five. The effect of this system, if adopted, will be to remove the representative further from the electoral body than he is by the present mode of election. This, under our present system of representative government, is a grave objection. I regard it as essential to the proper working of our system that the relation between the representative and the constituent body shall be as close and intimate as possible. In order that this should be secured, small districts are absolutely indispensable. In large districts, such as are proposed by the committee, it is utterly impossible that any one Senator could be personally known by any considerable proportionate number of his constituents. Now, if to be ignorant of the character and qualifications of the representative is a benefit to the constituent, and if to be ignorant of the wants and desires of the larger portion of his constituents on the part of the representative be on the whole judicious and desirable under a popular government such as ours is, then this large district system recommended by the committee is the one we ought to adopt; but if, on the other hand, it is desirable and essential that the representative chosen to represent the people who are to vote for him, should be known to the electoral body whose interests he is elected to guard and promote, and also desirable that the agent or representative should know and be acquainted with the opinions, wants and necessities of those whom he is chosen to represent, then this large district system ought, in my judgment, to be rejected, unless, indeed, its advocates can point out benefits which are to flow from its adoption that will compensate for those that are sacrificed by a surrender of the existing system. To my mind they can point out no such advantages which can accrue either to representative or constituent from this proposed advance backward from small to large districts. It is urged by the learned chairman of the committee [Mr. Merritt], and by other gentlemen on this floor who advocate this change, if I understand them, that the change will make the office more honorable, and secure the election of a better class of men. Is this so? I confess I cannot see it. How will the candidates be selected, who are to make this "better class" of Senators? Manifestly by a convention of delegates from each county in the district. Now, it will under a large district system very often occur, that the most of the delegates themselves will not know all the men who will receive the nomination for Senators. They will have to take the candidate proposed on the recommendation of

the delegates from that portion of the district from which he comes; and so, in turn, will the friends of that candidate take the other candidates in the same way, each locality recommending its own particular candidate, and taking the other upon the like recommendation from the other localities. Now what is there in this operation at all tending to secure a "better class" of Senators? Nothing at all. And when elected, how will it be? To whom is the Senator responsible? To just no one at all. His responsibility will be diffused over so large a territorial space as to be without appreciable weight resting upon him. Moreover, this was one of the very objections to the system which caused its rejection originally, and the adoption of the single district system in its stead. In the Convention of 1846, which adopted the single district system, the necessity of the change was very plainly stated by Mr. Wright, a delegate to that Convention from the county of Sullivan, and a member of the Committee on the Organization of the Legislature, and now one of the judges of the court of appeals. He is reported to have argued as follows on this question:

"What, said Mr. Wright, has created the desire with the people for single districts? Why have complaints been made in relation to the present arrangement? Because an important object is to be gained by bringing the Senator home to his constituents, by making him familiar with his constituency, and enabling him to acquire an accurate knowledge of their peculiar condition and wants. The county which he had the honor to represent was situated in the second senatorial district; the district was extensive in territory, and he doubted whether two of the Senators now representing her had ever set foot within the limits of Sullivan; and certain it is that those Senators were found last winter in these halls directly opposing by their votes her dearest interests."

Mr. R. Campbell, another member of that committee, is also reported as having sustained the single district system proposed by the committee in the Convention of 1846, as follows:

"He said that if any one fact should be prominent in this discussion relative to the duty of this Convention, it was the fact that complaints had so long been made of misrepresentation in the legislative bodies. He referred to the instructions given by the nominating conventions in relation to this subject as an indication of the popular will. The districts, as now organized, were a system of misrepresentation and not of representation. Some of them embraced a territory of some two hundred or three hundred miles, and it could not be supposed that one elector in one hundred could be acquainted with their senatorial candidate. Hence, the single senate district system had been adopted by the committee."

Mr. Crooker, a delegate from Cattaraugus in that Convention, is also reported to have said in regard to this large district system:

"The question under discussion was one most deeply interesting to the people of Cattaraugus. Their district, as gentlemen would perceive by looking at the map, embraced a single range of counties, commencing with Chenungo and ending with Cattaraugus. With an average breadth of about forty miles, the



length was not far from two hundred and thirty. In shape it resembled a piece of ordinary shirting stretched to its utmost limit. The people of Cattaraugus had for a series of years been compelled to vote for Senators of whom they knew nothing. He ventured to assert that nineteen-twentieths of the people of that county, in every three cases out of four, had never heard of their candidate for Senator until they found his nomination in the newspapers. Such, with all his advantages and knowledge of men in the district, had been his own condition. And for all practical purposes of representation, Cattaraugus might as well have been connected with Suffolk and the counties on Long Island. There was no communion of feeling between the people of Cattaraugus and Chenango. There was no union of interest between them except upon those great questions that affect and interest the State as a whole. The people of these counties on questions of a local character—often the most deeply felt—were antipodes of each other. If there was any one question upon which the people of that county were unanimous, it was in demanding the single district system. The expression of their opinion had on this subject been universal. They desired the privilege of knowing the candidates for the senatorial office. And they demanded it as a right of this Convention."

The above quotations are taken from the *Argus* edition of the Debates in the Convention of 1846, and are but specimens. They contain not only argument but evidence also as to the workings of the large district system when that "better class" of Senators were sent to the Senate. And to this indictment of that old and exploded system there was scarcely any denial in the Convention of 1846, and its truth and justice was affirmed by a vote of 79 against, to 31 in favor of it, which vote justly swept it out of existence. Its re-adoption now by this Convention, without any public demand to that effect, would be worse than a blunder—it would be a crime against representative government. If the system could not be made enduring by the giants of those days then occupying seats in the Senate, surely it cannot be made so now when the Senate is no longer a judicial body—the highest court in the State—and hence does not now attract to it, as it doubtless then did, the best legal talent in the State. I conclude, then, that it would not be right to adopt the large district system reported by the committee. It would be much more objectionable to adopt the system now, after the lapse of so long a period, and consequently large augmentation of population in the State than it was in 1846, and the reasons which were formerly argued with so much force and truth in favor of its abrogation are much more potent now against its re-adoption. Second. Is it expedient now to adopt the system proposed, even though it were admitted to be better than the single district system? I think not. There has been no call for such a change on the part of the people—none at all. And for this Convention to undertake to load down this Constitution which is to be framed here with so radical a change, and one so entirely uncalled for

by the people, and which will surely encounter more or less hostility from the various localities which may be unfavorably affected, is, in my opinion, wholly inexpedient, and I shall, therefore, favor the amendment proposed by the gentleman from Cortland [Mr. Ballard], so far as single districts are concerned, in the hope that we may adhere to the present Constitution so far as it met the public expectation, and amend it only in those respects called for by the people and demanded by the best interests of the State.

Mr. LUDINGTON—Mr. Chairman, the unanimous report of a committee, composed of intelligent, high-minded gentlemen, of both political parties and located in different sections of the State, entitles it at least to high respect and calm consideration. The subject is important as affecting the most fundamental interest of State government, the organization of the Legislature—the sole law-making power of the people, through and by their consent. On its constitution and virtue depend chiefly the hopes of the people for protection of life, liberty and property. Guided by no other consideration than the attainment of the best mode of subserving these ends, I, after the most impartial investigation of the subject have determined to give the plan—if no better one of a similar character shall be submitted—my support. Aside from local interests and selfish schemes, which true patriotism and enlightened statesmanship should disregard, when they conflict with the interests of the whole people, I believe that the organization of the State into large senate and assembly districts, will better attain the ends in view. If the plan proposed were an experiment, we might enter upon it with some hesitation. We might, however, be the more willing to make the trial, since under our present system, whether for real or imaginary causes I will not now say, our people have year by year been losing confidence in the wisdom and purity of our legislators, until they do not hesitate to say that they are composed in great part of men who have far less regard for the public, than private interests. And hence some change that might mitigate or wholly remove the evils complained of, would be hailed by the people as a harbinger of legislative reform. But fortunately the plan proposed by the committee is is neither a theoretical vagary, or an untried experiment. The system of large senate and assembly districts, and aggregated constituencies is not new, but the oldest and most approved in the history of the State. It was adopted by the Convention of 1777, which laid broad and deep the foundations of our State government, and whose wisdom, as evinced in its framework, has been imparted to and canonized in the hearts of the people. We still retain the form which they gave us. They divided the State into four senate districts, with six Senators from each, to hold their offices for four years, and to be so classified that one should retire and one be elected every year. And thus they remained until 1801, when the second State Convention was held, and the number of Senators increased to

thirty-two, and members of Assembly from seventy to one hundred. During this long period, when those political jealousies which gave rise to the revolution, were in their freshest activity, when the people for the first time began to participate in self government, and were most liable to make excessive demands, respecting immediate representation, this system of centralized political representation, as its present enemies call it, worked well and satisfactorily. During this eventful, and most interesting period of our history no sickening clamor about legislative corruption deafened the ear, nor were their morning and evening's pasttime employed in reading revelations of official corruptions, and frauds upon the people's treasury; where dishonesty was found, it was the exception, and not the rule. When again in 1821, a Convention assembled for the first time in this capitol for the purpose of revising or amending the organic law, and the pure and eminent men who composed it were like ourselves anxiously looking for reforms to meet the changed condition of the people, and their increasing diversity of wants and interests—both political and material—they were found willing to combine in the new form of government, such elements of the old as experience had approved, with such new ones as their wisdom suggested. We find them eliminating from the old Constitution and transferring to the new one, among other forms and principles, that same cherished system of large senate and assembly districts, which had met the sanction of the two preceding Conventions and the approval of the people for the preceding forty-four years. No objection was yet heard that the people were not properly represented from being removed too far from their representatives. No eloquent appeals broke on the ear of the delegates in that Convention that if these large districts were not broken up and the represented and representative brought nearer together, that unless local interests had local representatives in *both* branches of the Legislature it would become corrupt, the fountains of justice fail, and the people's liberties depart forever. Sir, such appeals and argumentation were left for a later period in our history. Once more they entered upon the same system of large senate and assembly districts; twenty-three new counties, having been added to the State since 1801, with a large increase of population, the number of senate districts was increased from four to eight, retaining the same number of Senators, with an increase of Assembly districts and members to 128. From that time down to 1846, a period of twenty five years, that period in which the slumbering energies of the State woke up, when it took its greatest stride in material progress, and political developement, in which the immortal Clinton, rising to the grandeur of the necessity, conceived and matured the nation's proudest work by which inter-oceanic communication was opened with the boundless agricultural and mineral wealth of the great north-west, which has ever since been pouring in upon us with boundless munificence and diffusing its blessings over the whole continent; and during which all the canals of the State were legislated into existence and

maintained without acknowledged fraud or material loss to the State. Within this decade the shrill whistle of the locomotive first broke the stillness of our forests, the magnetic telegraph spoke its lightning voice, and our population increased over 1,200,000. It may truly be said to have been the Augustine age, so to speak, of the State, and the Republic. If during this time any evils crept into our State government, it will, I apprehend, put the advocates of single districts to their wits, to show that it was owing to large senate and assembly districts. . Thus for seventy years, this system of legislative organization was found doing its work of progress and development. What sections of the State were neglected, what local interests suffered, and where was the citizen who did not feel that he was duly represented in the government? It bore the wisdom of the fathers, attested by the accumulated experience of the people for nearly three quarters of a century. But in the Convention of 1846 the word change first rang out in this chamber. No middle ground was taken, the work of the fathers was repudiated by the new authors of government. The wisdom of the Jays, the Kents, the Clintons, the Livingstons, the Spencers and Van Vechtens had departed. New men and newer theories broke upon the scene. Old lines were broken up, counties were divided and subdivided, political associations destroyed and local unities obliterated to meet the demands of the reformers of 1846. They organized thirty-two senate, and one hundred and twenty-eight assembly districts—Senators to hold office for two years, and members of Assembly one. Thus we find that more exalted and dignified branch of the Legislature, intended for more deliberative action, and as a check upon the unwise and precipitate action of the lower house, has, by its affinity with the Assembly in constituency and tenure, lost that character, and for the mere ends of legislation might with safety, be either abolished or merged in the Assembly. The only check left to the people, upon unwise and unwholesome legislation, is found in the purity and firmness of the executive veto—a power rarely exercised by the early governors. We sit to-day in the council chamber of the people of this great commonwealth to view under the light of history these two systems—the one tested by the experience of seventy and the other of twenty years. Sir, I do not hesitate to declare from the lights before me, that the practical working of the earlier system, came nearer the true ideal of government, by giving to the people greater security against imposition and fraud, while it met all the reasonable demands, and just requirements of the people. Had it not been for the separation of judicial functions from the legislative, found blended in the same officer under the former system, I doubt if the framers of the Constitution of 1846 would have given us the present system of small districts. As a distinctive measure it was not demanded by the people. If it was adopted then, for the reasons urged by honorable gentleman on this floor, for its retention, now, then I submit that they were guilty of the gravest

inconsistencies by giving us a judicial system organized upon the same basis of representative consolidation and political integration. My honorable friend from Chenango [Mr. Prindle], with an air of confidence, asked, "Who is demanding the change as proposed." My answer is, the same constituency that is demanding many other changes which we propose to make in the primary law. Those provisions for the Constitution which we have been memorialized to make have been rejected. Sir, the further the Senator is removed from the control of cliques and sectional influences the freer and purer will his duties be discharged. If the district is large, men will be the more likely to be chosen from their known virtues, business capacities and talents. If such qualities do not win success, none others should. If men of such character in one section of a district do not find rivals of equal merit in another, or if they do, the district and State cannot in either event fail in having a worthy and safe representative. This, sir, in my judgment is true patriotism and sound statesmanship. Had I any ambition for future senatorial honors, I am fully sensible, that the plan I support, if adopted, would blast all such hopes. Sir, I came not here to dig pit-falls for enemies or to engage in the no less unworthy business of building gilded pathways for myself or friends to places of honor and trust. I am under no instructions, except those of conscience and duty, and those I mean to fulfill. Have the opponents of the system proposed, shown any evils that have arisen or will necessarily arise under it, either of inconvenience in its operations or danger to the public weal? There has much been said in this regard respecting the wants of the people, a very popular, though oftentimes groundless theory. On this point I have only to say that I have the honor of representing in part a constituency which, for intelligence, virtue, public spirit and enterprise, has no superior in this State; and not one voice, except that of my honorable colleague from Orange [Mr. Fullerton], has been raised nor one line written against the report of the committee, while the *Daily Journal* of the city of Newburgh indorses it. The people of my district know that they are the constituencies of both branches of the Legislature. They care not how radical the lower house may be so long as they have an experienced and conservative Senate, with a continuing existence to supervise their proceedings, and which experience has shown we do not have under the present arrangement. The people are honest, and they demand honesty in their public servants. If the legislative department is pure it will be the purifier of all in subordination to it. If under the present system we have some pure and capable representatives, as it is conceded we do have, under the proposed plan we could not have less, with all the chances in favor of more. By enlarging the senate and assembly districts, extending the tenure of office and increasing the compensation, as proposed by the committee, you will improve the morale of the Legislature, restore confidence between people and

representative, and promote the general good. The people sir, are looking with hope to the action of this Convention on this report, and on that action they believe depends the future character of the legislation of this great State, the perpetuating of good government and the welfare of the whole people. Sir, I at present see no other practical way of their attainment than that proposed by the committee, and I shall, therefore, if alone among my honorable colleagues, give it an honest support, regardless of all local or political expediency, and rely upon a generous future for my vindication.

Mr. KRUM—In rising to discuss the question which is more immediately before this committee, I deem it unnecessary to offer any apology to the honorable gentlemen who constituted the committee that made this report. I do not believe, sir, that it becomes necessary to put in a defense for them, to put in a plea for honesty on their account, simply because we may differ from their action. I, some time since, introduced a resolution looking to the representation of minorities with reference to the Assembly. I believe yet in the doctrine of the representation of minorities in localities, and when that question is properly before this committee, I may have some suggestions I desire to offer upon that question. But the question of single districts or large districts, the question immediately before this committee, is what I desire to speak about now. When I look back in the history of our country—the history of the several Constitutions of the State of New York, that have gone before us, I draw conclusions different from the gentleman who has last addressed this committee [Mr. Ludington]. I look back to the Constitution of 1777, and find that then there were four senate districts—large districts—electing twenty-four Senators. I find that the Constitution of 1777 provided for that method of electing Senators, and that it continued until 1821. I find that in 1821 the Convention that then assembled also continued the large district system increasing the Senators to thirty-two. For the period of seventy years nearly, this State had had the experience of large senate districts sending their Senators to the Legislature. In 1846 a Constitutional Convention again assembled, and that Constitutional Convention took a different action upon this question from the Conventions that had preceded it, and the natural inquiry is, why? The large district system existed for seventy years. Why then did a Convention of the people in 1846 remodel and change it to what it is now? Let us look back for a moment into the history of the Constitution of 1846, and see if we can ascertain the reason. The gentleman from Saratoga [Mr. Pond] has given you a few of the reasons then stated. Others are to be found in other speeches of the men who composed that Convention. The Hon. Mr. Rhoades alluded to the unanimous call that had come up from the people for an amendment of the Constitution in this particular of single districts. Hon. Mr. Stetson said: "The people demand the formation of single districts." Hon. Wm. B. Wright said: "The popular will has been unequivocally expressed in favor of single districts."



Hon. R. Campbell, Jr., said: "If any one fact was prominent in the discussions of the people which preceded this Convention it was the complaint of misrepresentation under the present system of electing Senators, and whoever would take the trouble of looking into the proceedings of conventions nominating candidates for a seat in this House would find that in nearly all of such conventions a resolution was passed in favor of single districts." The Hon. Mr. Patterson said that: "When he came to this Convention he had supposed if there was a single question which had been fully decided upon by the people of this State, it was that of single districts for Senators. He had never seen any other view advocated in any newspaper throughout the State, neither had he heard any man oppose the plan." Looking through the debates of the Constitutional Convention of 1846, you will scarcely find a man who was bold enough to deny this representation by single district. The unanimous call of the people had gone forth; the unanimous expression went out to the Convention of 1846; and with the experience of three-fourths of a century, they yielded to the demand of the people, and the Constitution was adopted as it now is. Is it then wise for us now, in this Convention assembled, to change that plan? Change did I say? No, a return simply to the plan that the people so unanimously rejected, and to whose wishes the Convention of 1846 so wisely yielded. I find, sir, in the history of the past and in the present, what is the wish of the people, and that wish induces me to cast my vote on the question in such a manner as not to reverse the well known will of the people upon this subject. Mr. Chairman, we are sent here to represent the people, not to make such a Constitution as we may desire, unless our desires really be in accordance with the wishes of the people who sent us. We are mere agents and mere representatives, and they are our superiors, and to their wisdom, when we find it so unequivocally and explicitly expressed, it is our duty as their agents in submission to bow. Another reason, sir, why I am opposed to the large district system, is this: that you bring the question of representation home to the people; you permit the people, knowing their man, to cast their votes for the man whom they know. They are not voting for strangers; they are not voting for a man who has acquired a little public notoriety and a little public reputation, simply because he fills some public office. And I am surprised to see learned and intelligent men upon this floor take the position in favor of large districts, for the reason that none but public men should occupy the position of Senator of the State of New York—none but men who have been before the people. Will any gentleman upon this floor arise in his seat and boldly assert that in many a county and town, in many a little village and hamlet, in many a valley and upon many a hill side, there lives not a man who has never been before the people, but who, by reason of his education and by reason of his natural ability, and by reason of his honesty of heart, and integrity of purpose, is fitted to represent the State of New York in the high, responsible and respectable position of

Senator. Confine it to public men and how soon would the Senate run out? Confine it to public men and how long before there would not be a public man occupying such a position? If it is to be confined to public men then, when all the public men die, you can have no Senator. Place your constituency in a position where they may be brought before the public, where the men who know them may send their best men. Make public men of those whom the people do not know now. That is the way to elevate the standard and position of the Senate, and not by putting men there who have a little public notoriety, by reason of having held some public position. Mr. Chairman, there is another reason why I am in favor of small districts. The small district system has the tendency of drawing out the votes at the elections, not the republican vote, not the democratic vote, but the vote of the entire State. When your candidates are in nomination, when your tickets are in the field, what draws out the vote? Why, sir, it is your local candidates. It is they who induce men to come to the polls and deposit their ballot, unless, perhaps, in some great national contest, when you vote for President or rather for electors for President, or in a State contest, when the ticket is headed by the Governor. But aside from the Governor, State officers are generally unknown to the people of the State, and I deem it best, sir, that every man who is entitled to the elective franchise, should, in his own sound and proper judgment, go to the polls and exercise that right. Now, Mr. Chairman, various other arguments have been made by those who take the other side of this question. They are made more particularly in reference to the four-years' plan. They say give us a Senate of four years, and then we will have the benefit of experience. What experience, sir? Is it necessary that there should be experience in legislation in order to make an honest and upright and good legislator? I am not going to assert that there is not something in experience; but I do state this, that the question of experience like every other question, has its two sides. Experience in the line of honesty and in the forward march of integrity is an experience which is well for all of us to have; but, sir, there is a kind of experience, not in the legislative hall only, but everywhere, that leads to something besides that. There is an experience that tends to corruption; there is an experience that points out the way to vice; that makes the tracks therein and then that tells how to cover up those tracks. Experience, then, may or may not be a necessary requisite to a good legislator. Another idea advanced is that large districts will have a tendency to do away with the formation of "rings" and cliques which control nominations. They say that in the small district system, nominating caucuses get together and nominate men and make a mere clique or ring in the nomination of Senators. I hardly know what gentlemen mean by "cliques" or "rings." If they mean cliques and rings of men in every county, in every town, in every senate district, who have sufficient regard for the politics of the day to honestly and earnestly strive to promote the pri-

ciples they indorse, and the party carrying out such principles, then it is a clique or ring that one may well feel proud to be in. But if they mean that kind of cliques or rings formed by designing men for selfish purposes, to control nominations or corrupt conventions or men, then I ask if the larger the circle the larger is not the clique and the ring, and the more powerful its influence. In conclusion I would caution the Convention against such action as is known to be opposed to the decided and expressed desire of the people.

Mr. GRAVES—Mr. Chairman, I have listened with undivided attention to the debate upon this report for three reasons: first, to learn from the committee why they offered to this Convention a change in a system which had so effectually been carried out with the approval of the people; second, to satisfy my own mind that the arguments which were offered by the committee and the advocates of the measure were such as would allow this innovation upon an established and well understood principle; third, that the arguments were such as would satisfy the people to whom this proposed change was a surprise—that it was in truth a reform as well as a change. This committee have no doubt given the subject a candid examination, and have come to this conclusion from such observations as they have been able to make since they have had the matter in charge. But it must be apparent to all that the subject of this report, unlike many others, is as familiar to all the members of this Convention as it is to the committee; for it rests upon judgment and not from any facts which the committee have been gleaning from hidden and concealed intelligence. The good sense of this committee need not be doubted; but its members are only the twenty-second part of the aggregate judgment of this Convention and cannot justly claim any advantage over the opinion of other members of the Convention. In a body as large as this, composed of delegates from different parts of the State, unacquainted with each other's opinions, it is not surprising that they should entertain a diversity of opinion upon subjects so vital to public interest, and many times and on many occasions differ with the committees of their own selection. Indeed we have come here to differ, compare and agree. It is said that the object of this contemplated change is to secure men of more talent and greater moral worth in the Senate; and to enable the people to act more wisely in their selection. It is also said that Senators are incompetent and unworthy of their trust under the present system. I am not prepared to admit that the people send unworthy men. The people select those who are regarded worthy and well qualified for these positions and because they are corrupted when they come in contact with wicked and designing men in this atmosphere, and in their new relation of life, does it follow that there is any want of sagacity or ability in the people to judge wisely and choose discreetly, or that the system through or under which they are chosen is defective? But it is said that under this well established system we fail to get men of the highest capacity. Is it not easy sir, to see that the general diffusion of

knowledge has removed the barrier between great and small, and created an equality which levels the intellectual powers, and removes that disparity among men which characterized the incumbents of official stations at an earlier period in our nation's history? I am not prepared to admit that the Senate of this State has been inferior in intellect since 1846, to the Senate between 1846 and 1821; and I am not prepared to admit that our Senate to-day is not, in point of intellect and integrity, on an equality with any Senate which has honored this State at a period in its history when it was said, we had giant minds. The advance and change in our government created a desire to increase in wealth by such devices and schemes as seem well calculated to corrupt the good, and poison the element in which republican institutions have so long prospered. Amid this general onslaught upon virtue, it is not surprising that some should have fallen, and perhaps we ought to rejoice that so few have fallen. Again, sir, how will this change of district add any protection against these devices? You have not, by changing the district, changed the men nor added to their capacity or integrity. They are the same in character and ability and in number, and only taken out of the small districts and put into large ones—removed from the great body of those who should judge of their qualifications and fitness for these positions. Why ask to make this change? Have the people demanded it? The press has been silent, neither political party has breathed an intimation that has called for this report. Will this Convention assume to override the will of the people who have, by their silence, spoken their approval of this system as it now stands? Is it the object of this Convention to spend its time and deliberations upon subjects which have grown up in committee rooms rather than among the sovereigns of this land who will be prepared to rebuke our fruitful imagination with a veto power before that political tribunal from which we cannot appeal? The wishes of the people have been expressed through the public prints, and we see their desires written out; and we need not misjudge how and upon what the people desire us to act. The public judgment has expressed its opinion upon the elective franchise, and they knew that this Convention would differ upon that subject; but they confided in the wisdom and integrity of their servants who compose this body, that they would differ only as that difference would lead to careful examination and a nearer approximation to what the interests of the State demanded. They have long heard and known that the Erie canal has been the shibboleth before whom great and good men have fallen, and around which clustered the principal and the servant, the open and concealed partner, the official and his clerks, all plucking the fruit which seemed to be so palatable to many who have been surfeited by its quantity and richness, and in a voice which we must heed they have demanded of us that this great State power should not be prostituted to the venal purposes of making bankrupt the very authors of its existence. And this State capital, with its capacity for great State revenue should, by the united wisdom of this Convention,

be placed where the honored father of our worthy associate in this Convention [Mr. Clinton] intended it should be, in the hands of an efficient and honest power, through whose fidelity the State should be honored and her treasury enriched. The country demands that this Convention should ignore all questions having their origin in marked effort, and look with careful thought and cautious deliberation to the natural weight that bears its sinking burden upon the industrial interests and moneyed investments of our people, and, so far as within the power of this Convention, guard with a strong hand the interest of our people from that national crisis and monied Shylock, whose unwelcome power seems slowly approaching. They ask relief from the draining taxation that we have been compelled to submit to, in order to maintain our honor and our national existence. These, with them, have no party politics, no political wire-pullings, but come to the pockets unfilled, though the hands are at work and the capital is yielding its ordinary revenue. This demands the exercise of the condensed judgment of this Convention, and no time should be lost by us in making the examination. This financial question is the people's question, and they watch this Convention as though the responsibility of our State depended upon its labors. The mal and delayed administration of the law has awakened the interest of the litigant as well as the tax payer, and forced upon this body the absolute necessity of re-organizing the courts that justice may be more readily obtained and more easily recognized. This is a work, like the preceding, requiring more time and talent than can wisely be exercised in the weeks allotted to this Convention. And that class who are to be more immediately affected by it, as well as the community in general, however remotely, will have good cause to complain if our best efforts are not put forth to reform this manifest judicial evil, and no time can wisely be diverted from its due consideration. Our cities are to-day groaning under the severities of partial and forced legislation, which makes our local municipal regulations almost an unlimited monarchy; and the evils are so prominent that the millionaire as well as the day laborer is claiming at the hands of this Convention an organic law which shall guard capital, protect labor, suppress crime, and shield innocence and virtue. This is hardly secondary to any reform demanded from this Convention, and anything short of a full consideration of this question will do unmeasured injury to this mighty class who have, in deep earnestness, asked that they shall be governed by uniform laws, and that legislation shall be forbidden which has crippled the enterprise and fed the unweaned appetites of that class who have always made public good subservient to private interest. There are many other and important claims upon the judgment, ability, integrity and industry of this Convention which the people have partially discussed, and which they have sent us here to more fully examine and act upon. I submit, sir, whether we would not more fully meet public expectations and our own convictions of duty if we confine our deliberations to reforms demanded than to attempt changes where no

apparent evil exists, and by which arouse a feeling of dissatisfaction, which is already being awakened in the rural districts, which I fear will add to the uncertainty of recognizing the work of this Convention as worthy of their approval. Cicero said, at an early period of the world's history, that it was easier to pull down than to build up—to destroy than to create. Our small or single district system has met our wants and secured to all their rights, and from which no evil has arisen. I most earnestly protest in behalf of the twenty senatorial districts that the change should not be made as contemplated by this report.

Mr. ANDREWS—I have listened with great attention to the different views of gentlemen as to the propriety of adopting the one system or the other in respect to senate districts. And I agree fully with the gentleman from New York [Mr. Evarts] and other gentlemen who have stated that there can scarcely be a more important question for the consideration of this Convention than that relating to the organization of the Legislature of the State. In this body is deposited the whole legislative power of the people, restrained, it is true, in some respects by the organic law, but these restrictions are from necessity general in their character, while there is left to the Legislature the exercise of a mass of indefinite and discretionary powers affecting public and private interests. And, sir, it is for this reason that considerations bearing upon the organization of this body are and must be extremely important. The Legislature is the strong arm of the government. The Legislature may remove the Executive; and it may drive from his seat the judge who has degraded or disgraced his high office. The interests of the people are involved in the action of legislative bodies, and from the result of that action there can be no appeal. And, sir, it seems to me that the whole question as to large or single senate districts, depends upon the consideration whether by the one system or the other better representatives can be secured and thereby better and safer legislation. Sir, I differ from the gentlemen who have spoken upon this question in favor of the single senate district system in the statement that the demand for single districts was made by the people of the State, and that it was in obedience to public sentiment that the Convention of 1846 adopted the innovation which was then made upon the pre-existing system. Why, sir, as I understand it, the Convention of 1846 in their action proceeded upon the theory that, as it was an admitted axiom in American politics that the people were the source of political power, the true idea of government, founded upon that axiom, required that it should be arranged in all its departments so as to give to the people the most direct participation in its administration. It was, sir, the reaction in that Convention against the principle of centralization which had pervaded the earlier Constitutions of the State. The dominant idea of the Convention of 1846 was decentralization; and as the result of that idea the Executive was stripped of many powers which had formerly been vested in that officer. Judicial and administrative officers were made elective by the people, and the direct intervention of the people in public affairs was secured by frequently



recurring elections, and, as I believe and understand it, this plan of single assembly and senate districts which was then adopted, was a part of that general system as to the distribution of power which—under the idea I have adverted to—pervaded the action of that Convention. It was claimed that the nearer you could bring the representative to the people, the more direct and immediate the relation between the representative and the constituency, the smaller the constituency, and the more limited the district from which a Senator was to be chosen, the higher would be the sense of responsibility in the representative, and the more certain that there would be honest and intelligent legislation. And, Mr. Chairman, I desire to ask this Convention whether the practical working of the single district system during the last twenty years has justified the claims upon which the experiment was urged? Has the character of the legislative bodies of the State been elevated above the character of the Legislature under the previous Constitution? Has honest and intelligent legislation been secured? And, sir, the best illustration of this experiment is to be found in the Assembly where the districts are the smallest practicable, and where from almost every neighborhood there is a representative in the popular branch of the Legislature. I think, sir, I hazard nothing in saying to this Convention that that body in this State has forfeited public confidence and respect. If public rumor is to be credited, corruption has stalked unabashed and almost undisguised through our legislative halls. The memory of the past Legislatures in this State is odious with the people. The most direct responsibility to the people has not prevented this corruption in our public bodies, nor has the sense of honor or decency restrained them in respect to matters of legislation. It is true, sir, that owing to the limited number of the Senate, owing to the higher dignity of the position, owing to the larger districts, and constituencies which Senators have represented, the Senate has not shared entirely in this condemnation. There have been, to my knowledge and within my acquaintance, many able and upright men returned as members of the Senate during the last twenty years; but I think that public confidence has been greatly weakened in respect also to this branch of our Legislature. Now, sir, I am opposed to the single senate district system on the ground that that system requires either the annual or biennial election of the whole body of the Senate, or such an arrangement of details that only the voice of a portion of the electors of the State can be heard at each election in the choice of Senators. I believe it is a solid objection to the single senate district, that with it either the one or the other of these views must be adopted. I am also opposed, Mr. Chairman, to the single district system, because I believe that there should be a sharp and decided contrast between the organization of the two branches of the Legislature; that in no other way can the principle upon which legislative bodies in free countries are divided into two branches have fairly its representation and appropriate application. I do not agree with the gentlemen who have spoken

upon this floor, that it is desirable to bring the Senator as near as possible to the constituency whom he represents, in the sense in which this statement is made. In my judgment that is one of the dangers to be avoided, and I believe that our legislation has mainly suffered from the tendency to local and special legislation, induced by the very fact of substantial identity of local interest and feeling in both branches of the Legislature, between the several representatives and the constituency whom they represent. It is, sir, because Senators coming from a limited district, with a limited constituency, owing as they do their nomination and designation to a few prominent men in each locality—that when here they are under a kind of moral coercion to legislate in respect to local and individual interests, for the purpose of pleasing the constituency whom they represent, in disregard of the more important interests of the State. Special legislation to accommodate local interests, is one of the great faults in legislative bodies, and the dependence of a Senator upon a limited constituency is the great stimulus to such legislation. Sir, I do not fear another thing; I do not fear, sir, that by the substitution of the large district system there will occur a concentration of the political power of the State in the hands of a few men at the capital—a spectre which disturbs the minds of some gentlemen. For myself, I neither advocate nor am I in favor of so arranging the government of the State as to enable a few men to be the governing power of the State. I do not share, sir, in the apprehensions of many gentlemen upon this floor, that under the large district system there will be a regency in this State, wielding the power of the government. I was not a supporter, nor am I an advocate, of the system which, for years in this State, under the name of the Albany regency, controlled its political power. The Albany regency, sir, was an absolute despotism, and local politicians, in various portions of the State, were restive under its dominant and all pervading power. But, sir, when I come to look at the history of the period when it controlled the party organization in the State, I cannot fail to see that in the foreground in that power in the State stood men of high capacity and ability; men in whom great public and private virtues were recognized, and that, although they ruled as with a rod of iron the political organization of the State, nevertheless they had that high sense of honor, and that controlling sense of public duty which led them sedulously to guard the interests of the people, and to exact as a condition of promotion in the public service, fidelity to public interests. For my part, if we are to be ruled by politicians, I prefer such a rule; I prefer the domination of such men to that of the small politicians in the small districts of this State, who by intrigue, acquiring control of the political machinery through that, are able to designate and determine the persons who are to represent the people in the Legislature. I had rather be under the rule of politicians of a larger mold, than of that swarm of vampires who now, year by year, gather around the Legislature from each petty district of the State to fatten upon the public treasury, and to demand special legislation as the reward of special services. I am in favor of the larger

district system, because I believe that under it we shall get men of higher character to represent us in the upper house of the Legislature. I, sir, would make that a position which should be sought and desired by men who had a nobler and proper ambition to serve the State for the interest of the State. I would, so far as I am able, shut out from that house men who have merely local influence and local reputation, and would excite that emulation which would be felt in the various portions of a large district to send the best and strongest representation which they were able to the upper house. These are the views I entertain upon this subject. I would not lift Senators above, or make them independent of, the people of the State, but I would lift them above that popular clamor which compels them at times to consult the feelings of the local constituency at the expense of public interests. I would constitute the Senate, so that Senators should in truth and in fact be Senators of the State.

Mr. HARRIS — Mr. Chairman, I have listened to this discussion with some surprise and a little regret; because I have discovered there is a large number of delegates who still retain a favorable regard for the single district system, and surprise and regret from the apprehension that the vote of the Convention may indorse that system. I had supposed that the popular sentiment was almost unanimously in favor of large districts. I have not heard a person, I believe, within the last five years, speak in favor of retaining the single district system. Until this discussion commenced I had supposed it almost a matter of course that we were to change the mode of electing Senators. A good deal has been said to-day in reference to the action of the Convention of 1846. In that Convention, sir, I voted in favor of a single district system. Not only that, but, in my humble way, I advocated it. But I regard it as a failure, and I do not feel that we are making no progress when we return to a good principle that we have left. I am willing to go back to the system that obtained before 1846. I regard the single district system as having been adopted then rather upon political considerations than upon the ground of enlarged statesmanship. Sir, you are aware—all the members of this Convention are aware—of the peculiar circumstances, politically, under which that Convention was assembled. It was controlled by the radical portion of the democratic party who had become restive under the domination of what was commonly called the "Albany regency." They were determined to throw off the yoke—to get rid of the power of that regency. That object and purpose controlled the action of the Convention. The watchword and key-note was: "Remove power from the center, send it to the extremities; strip the Governor and the Senate of all power; let the people elect all officers." This was the purpose of that Convention; and this explains the action of that body in adopting this single district system. In my humble judgment, from the best observation I have given to the workings of that system, it was a great mistake; and I believe we would do well to return to the large district system.

And for this reason—that Senators are to be charged with the destinies and the interests of the State, more, perhaps, than almost any other officers. We need men of enlarged views, enlarged experience, and we are not so likely to get them under the single district system as the large. In my judgment the great excellence of the system reported by this committee is the fact that while Senators hold their term of office for the period of four years; at the same time the electors throw into the body of the Senate new Senators every year. I am, therefore, in favor of the report of the committee. If we do nothing here to improve the character of the Legislature, we shall fail to satisfy the expectations of our constituents. If there is any portion of the government that needs reform, I think all will agree that it is the Legislature. Yet it is proposed now to continue the senatorial system as it has existed for the last twenty years—to make no change. I think it would be a very great mistake if we should not do something for the purpose of satisfying the expectations of the people in reference to the mode of electing Senators; and I can conceive of no mode better than that reported by the committee. We all know that there is great complaint of the legislation of the State. We have been told that some 2,000 pages of statute laws were enacted by the last Legislature in one hundred days. I regard it as one of the great evils of our day. There never was a people so severely legislated as the American people. There never was a people that could endure so much legislation as ours are obliged to endure. It requires that we should adopt the wisest measures we can for the purpose of improving the character of our legislation, and it seems to me going back to the old system of electing Senators is really making progress in the right direction.

Mr. FOLGER — I was sorry that the hammer fell on the speech of the honorable gentleman from New York [Mr. Evarts] just as he had reached what, to my mind, was about to be the most interesting part of it, that where he had begun to develop his theory for securing the independence of the Senate of this State. In my view, in this discussion, that part of the idea which should govern us has been too much neglected. The single district plan has been advocated upon the ground of bringing the Senator home to the people, and making him feel almost irresistibly the power of his constituency upon him. I believe that the true idea is not complete unless it is also provided that there shall be independence of the Senate or in its action. That is what should also be held up to this Convention. What is the theory upon which we have a Senate? What is the theory of all free government in making two branches of a Legislature? What is the theory which pervades every measure proposed by any gentleman upon any side of this subject? It is that the Senate should be a different body from the Assembly in its constituents, its mode of office, and the tenure of office. Why should they be different? If the all-pervading idea is to be that the Senator should feel the force of his constituency almost always pressing upon him, and feel that he is circumscribed by it, and must meet his accountability at

very short periods, and to a limited constituency, why should there be any different tenure of office or any other difference in the constitution of the Senate? Why should not a Senate be elected by small districts no more numerous than the Assembly, and with as short a period of service? But it is admitted that there must be a difference. But why? We must base it on some ground. It is this, that there should be one body engaged in the legislation of this State which should feel independent in its conduct. Gentlemen acknowledge that theory. They propose to set it up and establish it. Will they stop short of putting it on a proper pedestal? After they have bowed down and worshipped it, and acknowledged it as the true theory, will they, in their practical action, destroy the idol at once? How are you going to reach and secure this independence? You must prolong their term of office; you must elect them by a different manner, and scatter their constituency over a larger district. I wish modestly to allude to the experience I have derived elsewhere than here upon this very subject. It was principally for that I rose, that I might add to sufficient reasoning of others my testimony as to the practical workings of the present system. In the beginning of the session of every Legislature we hear whispered abroad through these halls that certain schemes are to be presented here. Well, men say of this or that project, or that scheme cannot succeed; it is too preposterous; it disgusts the common sense of every one here that such a draft as that should be made on the treasury, or such an infringement upon the rights of the people. Men say "that cannot succeed." But along about the month of February it begins to be seen that an influence has been abroad on subtle or atmospheric force, and it is found that in counting votes there are more for it than you a month before would have supposed possible. About the month of March it has gone further, and it is pretty certain it will have a majority. Well, now, why? I do not admit that any man has been bought for that scheme, but I do declare that the interests of himself and his constituents have made him engage in log-rolling to carry some pet measure by giving his influence and his vote to that scheme. How is that? I come from a single senate district, and come the sole representative of that district. That district has a local measure which it is incumbent upon me, or I think that it is, to advance and secure or go home disgraced and fail of a re-election. Now, how am I to secure it. On its own merits and with only the support it can attract in and of itself—that measure cannot succeed. I must combine then with the supporters of other measures. And there it grows. I use now the first person of the pronoun that I may not reflect upon others, though I disclaim having acted thus. I look about me, and see on the files of the Senate this bill, and that bill, and that bill. I find who are the introducers or supporters of them. I associate myself with them, conspire with them if you choose to use that word, because I do not want to lose my constituents' project, and cannot carry it without extrinsic aid, and can only get help by giving aid for aid. I find there is the Central railroad fare bill, the Susquehanna rail-

road bill, the Whitehall and Plattsburgh railroad bill, the Chenango extension bill, the bill for the exemption from taxation of railroad bonds and others of that class, hundreds of them which my recollection fails now to call to mind. Now, this little matter of mine up in the twenty-sixth senate district can go if they can go, and it cannot go if they cannot go. We must combine votes. Now, see the result. Without money and without price, except the oppressive and compelling idea that I cannot go home to my constituents without that little measure is carried, I am induced to vote for these other things in reward for the favor which comes from the supporters of them to my measure. I could specify instance upon instance where I have seen this effect. But suppose I have, as gentlemen have, colleagues in this Convention, three other Senators with me in my senate district, I divide the responsibility with them. I go home and say I consulted and acted with Mr. So and So and Mr. So and So, who are also your representatives, and we found that although the measure was a fair one and ought to be passed and that we had presented it as well as we could, still we had not strength enough to do it, that the pressure from greater and more general considerations was too powerful. Other gentlemen did not see it in the same light we did, and they were the majority. Thus I divide the responsibility. I say that I am not alone to blame. But suppose I am the sole representative, my constituents say to me on my return home, the Senator from such a district got such a railroad bill or other bill carried, why could not you carry one bill appropriating \$25,000 for the repair of the Crooked Lake canal or whatever it may be. The fear of reproach is almost irresistible to the representative while human nature is constituted as it is now, with its ambitions, and its desire for approval and commendation. Now, here is just where an improvement is desired, or at least needed. We want to enlarge the senate districts for the reason that we want to increase the feeling of independence on the part of the Senator; for the reason that we want the Senator not to feel himself at the mercy or caprice of any particular small section of country; to increase the number of representatives so that the responsibility shall be divided and the representative may go home and say, I did my duty as well as others did theirs. We all did our duty, but failed of success. There is a great deal of talk about legislative corruption. It is not for me to affirm or deny it. It is not new. I wish I had here the debates of the Convention of 1821, and I would show you running all through them, from page to page, complaints and denunciations of legislative corruption almost in the very verbiage that has been used in this Convention. "Legislative corruption" was then the cry, as it is now the cry. It may have been just and well founded then. I shall not admit or deny but that it is well founded now. There has been no remedy found for it if it does exist, for one reason—because we have been going in the wrong direction. Instead of increasing the independence of the representative, we have been all the while increasing his dependence upon his constituency—a small circum-



scribed constituency — making him feel that he represents a hamlet instead of a State. The gentleman from Albany [Mr. Harris] has alluded to the ponderous volume of laws that is shortly to come out. It will be a ponderous volume. But what is it? It is in the greater part legislation for localities; it is of laws passed for localities under this very pressure of which I speak.

Mr. VAN CAMPEN — Without any desire to interrupt the gentleman [Mr. Folger] I would ask him if this local legislation will not be prevented by giving greater power to the boards of supervisors?

Mr. FOLGER — You cannot cut off legislation for localities. You cannot, beforehand, in a Constitution to run for twenty years, define specifically what the board of supervisors shall do. Is there any gentleman here who will grant a board of supervisors an unrestricted power of legislation? By no means. You must specify beforehand the power of any such board as that. Gentlemen will not maintain that they shall have general powers of legislation. Such a proposition subverts all the theories of a well constructed Legislature, which require two bodies as a check, one on the other. Here is this volume alluded to by the gentleman from Albany [Mr. Harris], of two thousand laws. I will venture to say there are not fifty public laws in it.

Mr. S. TOWNSEND — There are a thousand laws only; two thousand pages.

Mr. FOLGER — There are not fifty of a general nature. It is this pressure upon the representatives of small local constituencies that produces this kind of legislation. The Committee on the Judiciary of the last Senate reported adversely to many of such bills, but by the earnestness of representatives the committee was sometimes overridden. Though many of these could have been disposed of elsewhere, they came here, showing that the evil is not remedied by giving powers of local legislation to boards of supervisors or other local bodies. The bill is sent to the local representative, and he is held responsible for its passage. He desires to gratify his constituency, as I said before, on account of his reputation as an able, and tried, and expert legislator, a man who has influence with his fellow. That is the way volumes swell to 2,000 laws. Now, the State generally is not over-legislated; but it is the localities which pour into this great hopper of legislation at the capitol, the grist which is ground out here when it can as well be ground out elsewhere. I am, therefore, for large districts, and I must join in the surprise of the gentleman from Albany [Mr. Harris], at the disposition manifested to retain the single senate district system. I must say that when I came here in June, if any one had asked me what changes would have taken place in this Constitution, I would have said there will be a return to the large Senate districts, for experience has demonstrated the imperfection of the single district system. I had not heard the contrary expressed until within the last month. And I must caution gentlemen that they are not fully informed of the popular will and sentiment on this subject for I do believe that there exists in

this State a desire for a return to the large senate district system, which, lifting the Senator above the caprice or dissatisfaction of narrow limits shall leave the representative independent, and fix an extended term of office which gives time for the tide of public opinion to flux and reflux, before the representative is brought to his account for official action.

Mr. EDDY — I am in favor of the amendment of the gentleman from Cortland [Mr. Ballard] now under consideration before the committee, which provides for single senate districts. My reason is, that the large district system is not, in my opinion, as has been so ably discussed by my colleague [Mr. Graves], demanded by the people of whom we are the representatives. I have yet to hear from the first man outside of this Convention who is in favor of a change in the present system, or who feels any dissatisfaction connected with it. I think, Mr. Chairman, that this Convention is taking upon itself quite too much business, which is entirely uncalled for. There seems to be a disposition to enter in detail into the minutiae of legislation not anticipated by the people, and which does not come within the province of this Convention to consider. The first great and all-important measure demanded of this Convention by the people, and which mainly induced the electors of this State to call together this Constitutional Convention, was the re-organization of our present over-burdened and unjust judicial system. Second, that the Empire State might be permitted to pronounce emphatically, as an example to other States, in favor of universal manhood suffrage. It is, of course, expected that this Convention will, by constitutional enactments, do all in its power to prevent future corruption by State officials, and also to prevent an undue and unwarrantable expenditure of the public money. Aside from this, sir, no radical changes are demanded or expected from this Convention. Let us remember the fact that the people have yet to render their verdict upon our work, and our duty is to conform as far as possible to their wishes, that our labor may receive their sanction.

Mr. BICKFORD — I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Bickford, and was declared carried, on a division, by a vote of 64 ayes to 24 noes.

Whereupon the committee arose, and the President resumed the chair in Convention.

Mr. FULLER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The PRESIDENT announced the question to be on granting leave.

Mr. GREELEY — I trust we will not grant leave to sit again. At this rate we will never get through. If we take the subject from the committee we will get on.

Mr. WEED — What is the result, under the rules, if we refuse to grant leave?

The PRESIDENT—The result will be that the report will lose its place in the order of business.

Mr. WEED—Will it throw out the whole subject?

The PRESIDENT—It will be a virtual rejection of the article.

The question was then put on the motion to grant leave to sit again, and it was declared carried.

The PRESIDENT—The hour of two having arrived, under the order of the Convention a recess will be taken until half-past seven o'clock.

So the Convention took a recess.

#### EVENING SESSION.

The Convention re-assembled at half-past seven o'clock, when it resolved itself into the Committee of the Whole, on the report of the Committee on the Legislature, its Organization, etc., Mr. FULLER, of Monroe, in the Chair.

The CHAIRMAN announced the pending question to be on the amendment offered by Mr. Ballard to the amendment offered by Mr. E. Brooks to section 2 of the article as reported by the committee.

Mr. VAN COTT—In the progress of this debate, sir, to which I have been a very close listener, I have occasionally taken a note with the thought that I might occupy the time of the Convention to answer some of the views that have been presented in support of the single district system in opposition to the larger. If it were in order, sir, I would very much like to take the sense of the Convention upon a proposition to abolish the Senate. I would like to bring gentlemen to a position where they would be obliged to consider the original principle on which the legislative department of the government is divided into two chambers, for every reason which any gentleman could give in support of such a division would be a refutation of the argument in favor of the smaller, and an argument in support of the larger divisions reported by the committee. Sir, where is the use of having two houses organized upon substantially the same basis, and working substantially through the same processes to reach the same results? If I were to propose to divide the Assembly into two houses of equal number, the absurdity of the proposition would strike the mind at once. If I were to propose to elect the whole one hundred and sixty members constituting the Legislature, and to cut off thirty-two and to send them to a different chamber to deliberate, the absurdity of the proposition would strike the mind at once. We come back, sir, therefore to the plan of the two houses, not to make like, but to make unlike, to produce the system of checks and balances, and to preserve the balance of the system, not by the independence, but by the dissimilarity of the two bodies. Now, sir, in the constitution of the smaller body we followed originally the system of the British Constitution. We had then, in the smaller body, a hereditary branch of the Legislature, an aristocratic branch of the Legislature if you please, and the opportunities belonging to wealth, and to fixed position and to permanency, a larger knowledge and a larger comprehension of affairs, and, through these qualities, that species of conservatism which holds the machinery

of the State so that its motion may not be so irregular, rapid, or violent as to shake to pieces the system of which it is a part. They have the opportunity of bringing great experience and very maturely developed qualities of statesmanship, and that reserve which is necessary to check the more rapid progress of the more popular body. Passing from the British Constitution to an experience which is entirely our own, we have in the constitution of the legislative department of the Federal government, the House of Representatives, elected from smaller districts and for shorter terms, and the Senate, elected from the States, and for terms three times as long as that of the House of Representatives, and, without following very closely and uniformly any system, we find in all our State constitutions the same general principle of two chambers, fully embodied and imbedded as a part of our American political system. Now, sir, in 1777 we constituted our State governments upon the same principle. We made larger districts for the smaller body. We made longer terms for the smaller body. We introduced, so far as was consistent with the principle of our institutions, the conservative and permanent elements into the smaller body of the Legislature. We adhered to that system until 1821. We continued to adhere to the principle and substance of the system until 1846. In 1846 an epidemic of constitutional change broke out in the country, and with it, and peculiarly characterizing it, was the principle of the decentralization of power, which has disintegrated and almost resolved society into its original elements, and brought on anarchy with corruption. Now, sir, why not adhere to the principle of the system or else abolish it altogether? I am for preserving the substance of the system or else abolishing it. The form, the empty shell of the system is but a mere snare and not a help to us. I remember, sir, an anecdote that is told of Sir Isaac Newton. That philosopher having a favorite cat, in order to give it free access to his study, cut a large hole in his study door. By and by, a kitten was born to the cat, and then the philosopher cut a smaller hole in his study door through which the kitten might pass. Sir, do we not do the same thing in substance when we bring these two houses together into a legislative department, exercising the same functions under the same influences? Have we not one hole too many? Do we not go entirely beyond the reason of the thing in constituting the second branch of the Legislature, when we depart so widely from the principle on which we separate the Legislature into two chambers? Then you will observe the practice of the State in affirmance of the general principle which has some value here as our guide, as indicating the general sentiment of the people. We have departed from the principle in respect to this particular thing, while we have adhered to it in general. You take the general constitution of the Legislature. You take your supervisors; you elect them in small districts. You take your members of Assembly, and you elect them in larger districts. You take your Senate; you elect it in still larger districts. You take your Governor, a part of the legislative department under the Constitution, and you elect

him in a still larger district. As you diminish the number you increase the district. As you make more important the officer and his functions, you give him a larger constituency. Take the judicial department, and you follow out the same principle. Your county judges you elect in each county of the State. Your supreme court judges you elect in eight judicial districts. Your court of appeals judges you elect by a general ticket, with the whole State for the constituency of the court. As the court rises in importance, and you wish to give dignity to it, as the functions you intrust to it are larger or more important or more influential, you bring it upon this large constituency, and take the larger voice or the larger vote of the people in its creation. Now, sir, I ask you to apply the same principle which you apply so steadily elsewhere to the legislative department, to return to that sober reason and sound philosophy with which we commenced the organization of government in this State. A gentleman that I listened to with great interest the other day, the gentleman from Lewis [Mr. Brown], put off on this Convention this striking fallacy: He says, "If your thirty-two districts are too numerous, if eight are better than thirty-two, then four are better than eight, and one is better than four." The gentleman forgets that in propositions you have to observe measure and proportion. I am not obliged, because I am content with enough, to take either too much or too little. The gentleman fails to mark the distinction which pervades all practical affairs. The gentleman wishes to build himself a convenient house, and arrange an elegant suite of rooms. He proposes thirty-two. I tell him thirty-two are too many, that he will make a lot of pigeon-holes instead of apartments, and suggest to him the number of eight. He says, "If eight are better than thirty-two, four would be better than eight, and one would be better than four." I propose to build a ship, and the gentleman says to me, "Take the Half-moon which brought Hendrick Hudson to the discovery of the great river—take that for your model," I say, "No; that is too small for modern uses." Then he says, "Take the Great Eastern." "The Great Eastern is too large." May I not observe this system of proportion in adapting my requirements to the wants of the occasion out of which it grows? Is not the fallacy of the gentleman obvious; is it not clear that I am not obliged, because I am discontented with thirty-two, to take one; and am I obliged, because one is too few, or four too few to go on up to thirty-two? I may take a medium number; a number at any convenient point. Then we were met with another observation that has been repeated throughout this Convention as though it really amounted to something. It is said that if we go from thirty-two districts to eight we are going back on the Constitution of 1846 and going back upon the people. Well, sir, what does this idea of going back amount to? I suppose, sir, that we were sent here to go either back or forward, and it is quite immaterial, as far as the principle is involved, whether we do what he calls going back or going forward. We were sent here to change the Constitution. We were sent here to ascertain what part of the Constitution reason and experi-

once approved as good, and what part of it reason and experience rejected as not good, and we were to make the changes that reason and experience prompted. We go back, therefore, to the extent to which we make any such change in the Constitution; and we were sent here to go back, in that sense, or else, sir, why are we here at all? We have heard the opinions of members of the Convention of 1846 constantly quoted and flung in our face as though these opinions were to decide anything here. These opinions are in the Constitution, and with the total results of these opinions, as so embodied, the people were not content, and they sent us here to reform their work, because they were discontented with that work. We go on departing from their opinions as far as necessary. We departed from the Constitution of 1777 to that of 1821; from that of 1821 to that of 1846; from that of 1846 to that of 1867. We departed from the Confederation to the Constitution. We go on as a self-governed people, and the people are constantly developing in intellectual power, by education and experience, and adapt their institutions to existing wants; and it is precisely that process which we are attempting to follow here. Then, it is said that we are placing the representatives further from the people by taking larger districts than in taking small. Now, sir, I do not quite comprehend that proposition. I do not see why I am further from my representative when he is elected in a larger, than when he is elected in a smaller district. I vote for supervisors; I vote for members of Assembly; I vote for Senators; I vote for a judge in a district consisting of one-eighth part of the State, I vote for court of appeals judges in a district composed of the whole State; I vote for Governor. In every instance, I exercise my power directly upon my representative. There is no intermeddling. There is no go-between separating me and my representative. He is brought directly in contact with me, and I with him, by deliberate choice, for the functions which he is to perform in the government, and it seems to me it is a mere idle refinement to talk about separating constituents more widely from their representatives, whether you elect in the larger or smaller districts. The fact that he is my choice, without any intermediary, is the fact that brings him in direct personal contact with me. Now, the gentleman from Orange [Mr. Fullerton] told us the other day that the constituent knew the Senator when he was from a district representing a thirty-second part of the State, but that the knowledge of the constituent did not go beyond the bound of the narrow district; that he was able, in the exercise of his political sagacity, to find one man in a narrow district who was fit to be a Senator.

"Diogenes his lantern needs no more;

One Senator is found, the search is o'er."

The capacity of the constituent was limited by the bounds of a single narrow district. Now, sir, I do not so apprehend the intelligence of the people of the State of New York, and the gentleman will excuse me if I say that all that sort of talk seems to me to be a libel upon the intelligence of the people of the State of New York. Either the candidates



for Senators and for other high officers must be so exceedingly small that we need a microscope to discover them, or the people must be exceedingly ignorant or narrow, or there must be intelligence enough to search over a considerable district, and to know a man that passes through the various grades of office, or who holds a position socially or politically in a large community for a considerable number of years—to know who are the men best fitted by intelligence and integrity of character to represent them in the Senate of the State; and I say again, I think all this sort of remark about the narrowness of the people, and the limit of their intelligence, is a libel upon the good sense of the people. Now, sir, I believe that the true way to deal with the people is not to flatter them, but to tell them the truth and to give them honest advice; and I think the part that we in this Convention are to perform is just this: not to look for things that may be thought at present popular, not to look for things that are flattering that may be said of the people, but to look the facts of the situation in the face, to find out what is best, and to tell the people the honest truth, and keep to our honest convictions of the truth; and I think, so proceeding, we ought to tell the people that they ought to exercise a large and careful choice in the election of their representatives to the smaller and in some respects more important department of the Legislature; that they ought to select the candidates for that place with regard to a larger intelligence and a larger character; that they should not be selected through the narrow interests of petty localities, but they should be men of mind large enough to comprehend the wants and the interests of the great State of which the districts are but parts. I think that is the advice we ought to give to them, as the result of our careful consideration of the plan upon which the legislative department of the government is formed, with its division of legislative chambers.

Mr. LANDON—I should not participate in this debate to-night, sir, did I not deem that some of the arguments advanced this morning in support of the large district system were more specious than sound. The gentleman from Ontario [Mr. Folger] told us that the principal object of the large district system is to procure the independence of the Senator. What is that independence? He explains to us that the Senator coming from the present single district, in the discharge of his duty, is annoyed by the wants of his constituents. The independence that he seeks, then, is—independence of his constituents. He wishes a Senator to be placed in so large a district, that he may be able to despise and evade the wants of his constituents. Sir, when we have that kind of a Senator, we will have a Senator that will be irresponsible; for the responsibility which he owes to the State, which is all the gentleman desires, will not oppress him. Sir, when we have power, and do not add to it responsibility to the source from which that power is derived, we create tyrants. The history of tyrants all over the world is the history of power joined to irresponsibility. Do we want such a system? Do we want Senators in this State to bear the exalted honors of office and be free from its cares and responsibilities—to be inde-

pendent of their constituents? I think not. I think we want men who should be responsible to some power somewhere; and when we divorce the power from the responsibility, we have lost control over it, and our servants may represent us here and they may not. Again, sir, these districts have been spoken of contemptuously as small. Do they not consist of one hundred and fifteen thousand people, and are one hundred and fifteen thousand people nobody? Are their rights not worth preserving? Are not the rights and interests of one hundred and fifteen thousand worth the care and consideration of any Senator? Are the rights of one hundred and fifteen thousand men of such a character that they can be safely committed, or might as well be committed, as the gentleman from Onondaga [Mr. Andrews] says, to the small politicians, "the vampires of the State?" I think it is a strange doctrine to be announced here, that the rights of so large a body of men, larger than the inhabitants of some of the States of the Union, will under the present system naturally be committed to the care of vampires. Gentlemen clamor for experience in the Senate. Does experience always bring virtue? The gentleman from Ontario [Mr. Folger] this morning, referring to his own experience, showed how experience—

Mr. FOLGER—Will the gentleman allow me to explain? I disclaim ever having used such means myself to pass a bill in which I had an interest.

Mr. LANDON—I accept the explanation. Referring, then, to his observation, he showed us how experience might beget "log-rolling;" but there was no need for the gentleman in this hall, or anywhere throughout this State, to let us know that his own hand had not propelled the lever. Experience in legislation is sometimes accompanied with vice, but long experience makes it less repulsive.

"Vice is a monster of such hideous mien,  
As, to be hated, needs but to be seen;  
But seen too oft, familiar with her face,  
We first endure, then pity, then embrace."

May it not be so with our Senators? The gentleman from Albany [Mr. Harris] says the Convention of 1846 made a mistake in abandoning the large districts. I am not old enough to speak from personal knowledge as to the working of the system under the large districts, but the gentlemen who have preceded me in this debate have referred to the cotemporary evidence in regard to the character of that system, and that evidence speaks in no uncertain tone. It is evidence tending to show that Senators chosen in large districts abandon the interests of their constituents, that they come here to the capital of the State and engage in aiding the claims of aspirants to office and making money. I beg leave to read from the speech of Mr. Morris, taken from the report of the debates of the Convention of 1846:

"The great cause of calling this body together was that the constituency were misrepresented by the delegates elected. They were elected under promises and pledges they never kept, and used the power given them to make money and to advance aspirants to political favor."

It may be, sir, that many of the arguments which were introduced in 1846 in opposition to the large or quadruple system, may, under the light of subsequent experience, and now, when we have forgotten the facts upon which those arguments were based, be deemed more specious than sound. But we have this fact remaining, that that system of senatorial districts was condemned by the deliberate judgment of the people of the State who tried them; and unless we are willing to close our eyes to the experience of those who have preceded us, to the arguments which they have furnished us, to the evidence which they have transmitted to us, we cannot entirely agree with the gentlemen who kindly say that a mistake was made in 1846. What kind of a mistake was it, sir, to abandon a system which was so full of fraud and corruption? It may be that those who look back over the space of twenty years—twenty years, sir, which have perhaps thrown their shadows over the vices and left only the merits of that body perceptible—it may be that those men regard with regret the system which has passed away, and which, if they forget its demerits, they may regard as one of the last landmarks of the better days of the State. These gentlemen tell us they had better Senators under the old system than under the new. This is a statement pleasant to make, and it is a statement very unpleasant to contradict. Pleasant to make, because the most of those Senators have in the lapse of twenty years gone down to their graves full of honors, and those who survive have survived all calumny, and worthily enjoy the honors which a younger race of men honor themselves with bestowing upon them; but, I think, in contrasting the present system with the past, we should be careful to guard against the illusions of the past. I think there is the same tendency in this respect as in others, the same that Dr. Johnson speaks of when he says that we estimate an author's merits when living by his worst performance, and when dead by his best; that we are always more willing to honor past than present excellence. Macaulay tells us that society, while always advancing with eager speed, is always looking backward with tender regret; that we are, in this respect, like the traveler in the Arabian desert. Beneath the caravan all is dry and bare, but far in the advance and far in the rear is the semblance of refreshing waters. We should be careful here, sir, that we do not view too keenly the vice of the present, nor the virtues of the past. The fault is not one of system. It is idle for gentlemen here to contend that we can have a good Senate as the consequence of the size or the shape of the district. It is probably true, sir, that under the old system they had some bad Senators, as we now have; that under the old system there was corruption, as there is under this. The fault, sir, is not in the system, it is in the men. "The fault, dear Brutus, is in ourselves, not in our stars, that we are underling." If we wish to have good Senators, let us urge the people themselves to an examination of this question. Let us take the political power of the State out of the hands of the professional politicians, out of the hands of the shoulder-hitters, the wire-pullers, the schemers and the demagogues. Let the people who are interested in having good government interest themselves in securing it, and then sir, I care not whether the district be large or small, we will have a good man if we can find one in the district. I am just as much opposed as any other member of this House to corrupt legislation, but if we expect to remedy the evil by large districts we are in error. I think we can find some remedy for it, in withdrawing from the Legislature cognizance of that special legislation which constantly surrounds and fills this chamber. If we destroy the source of corruption, we need not stop to purify the channel. I think, sir, that the increase of pay would tend to promote the virtue of our legislators, for I can conceive that it is hardly possible in the city of Albany, when board is advertised at four dollars a day under the caption of "great reduction in prices," for virtue to find himself well clothed, well fed, and kept respectable at three dollars a day. I do not think our people expect that. But, another reason, sir. I hold it to be a fundamental maxim in our system, that the nearer the power is kept to the people, the better that power will be preserved. I know it has been sneeringly said that that is the argument of the demagogue; but the statesman may well take a lesson from the demagogues sometimes; for it does happen that his keener instincts will discern the truth where the slow reason of the statesman will fail to discover it. I know it to be true, sir, that in our small towns throughout the State, where the people themselves assemble to nominate their officers without the intervention of delegates, the best men of the town are chosen, as a rule—a rule to which there is scarcely an exception. But when we come to the larger towns and the smaller cities, where the intervention of delegates becomes necessary, there the high standard of merit prevailing in the small towns begins to fail. The delegate begins to deal on his own account and for his own advantage; and as we increase the size of the district, we find the same falling off in virtue. Is it true, sir, of this whole State, taken as a district, that the people, in the manner in which officers are now elected, select their best men for their highest offices? I think the experience and the observation of every gentleman here will bear witness that they do not as a rule. Why, sir, in this State, rich with its men of wealth, culture and statesmanship, the best offices are dealt out to satisfy the clamors of locality and the claims of scheming politicians. All of us have voted for men whom we did not know—whom, when we came to know, we regretted having voted for. The people themselves will not vote for a bad man if they know him; and in a small district they may know him, and in a large district they cannot. So that the argument of keeping power nearer to the people is true not only in theory, but it is true in practice. The nearer it is kept there, the better will that power be exercised. Another word, sir, in regard to the representation of minorities. The single district system will tend better than any other to secure a representation to minorities until we shall adopt the system, or something like the system, introduced by the gentleman from Westchester [Mr. Greeley]. A new and true idea in govern-

ment develops as slowly as an oak grows. I am glad that this system has the advocacy and support of the gentleman from Westchester [Mr. Greeley], and I hope he will live long enough to see the people educated to demand it; but until that time shall come, the present system will allow us occasionally to have a republican from New York and a democrat from some republican portion of the State.

Mr. T. W. DWIGHT—In rising to speak at this late stage of the debate, it will hardly be possible for me to throw out any new ideas. The most that I can expect to do will be to present those views that have come before the Convention in a somewhat new and different light. I am unequivocally in favor of what is known as the large district system, as in the form presented to us now—in favor of eight districts as distinguished from thirty-two. And in my mind this subject involves the whole theory of representative government; because, if we are to have two houses, one of which is a mere repetition of the other, then I say abolish one of the houses, for that is much the simplest form. What then is the real ground on which we are to have two houses of the Legislature? There have been minds of a philosophical turn which have been led to the conclusion that, as society is indivisible, therefore we ought to have one house, as expressing its indivisibility. One of the leading advocates of this theory was Benjamin Franklin, who presented his ideas in such a way as to stigmatize the opposite view with ridicule. He is reported to have said that two assemblies appeared to him like a practice he had somewhere seen of certain wagoners, who, when about to descend a steep hill with a heavy load, if they had four cattle, took off the first pair, and chaining them to the hind part of the wagon, drove them up hill, while the pair before and the weight of the load overbalancing the strength of those behind, drew them slowly and moderately down the hill. By this allusion he succeeded in carrying the State of Pennsylvania for a single house; but a wiser statesman than Franklin, the elder Adams, made use of this incident in the true spirit of philosophy. Using the words of Harrington, somewhat varied, he says, "Oh! the depth of the wisdom of God, who, by the simple invention of a poor carter, has revealed to mankind the whole mystery of a commonwealth, which consists in dividing and equalizing forces and in controlling the weight of the load and the activity of one part by the strength of the other." And this great statesman expended great labor in endeavoring to show from all experience and all history that there must be two houses in a representative government in order that the activity and progress of the one may be balanced by the conservatism of the other. Now, sir, I speak more specifically of two great reasons why we need two houses of the Legislature here; first, negatively, that we may prevent improper legislation from being introduced; and, secondly, positively, that we may employ one house as a veto or a check upon the other, and that we may enable the people themselves to correct their hasty action. The statesman finds that there is often one layer of public opinion under another,

and he seeks slowly and carefully to find that which lies underneath. Now, sir, if these principles be true, it will follow that the only mode in which these double results can be accomplished is by a diverse organization of the two houses. How shall we have a valuable appeal if one court is organized precisely like another? How shall we check the passions of the people if the two houses reflect equally those passions, and are equally filled with men of a headlong and a passionate character. The authors of the Federalist say wisely that it is politic to distinguish the two houses from each other by every circumstance which comports with a due harmony in all proper measures and genuine principles of republican government. Now, sir, it has been already said in the progress of this debate, that we have abundant illustrations of this principle, especially in the two great and stable governments of the present time, those of England and the United States. The statesmen of England understand this principle so well that they seek to introduce diverse elements even into the same house. In the very last reform movement of the present month, it was seen fit by the English statesmen to introduce a member for the university of London, as was previously the case with Oxford and Cambridge, and we know well that in the organization of the other house very diverse elements are brought in contact. Now, if this is so true in the single house, how much more is it true that the true spirit of legislation demands there shall be diverse elements in the two houses? I shall not dwell on this branch of the argument, as I have already been anticipated in it by the gentleman from Kings [Mr. Van Cott]. Now, sir, if we come to our own present condition, do we need this diverse organization for our own protection? Why, sir, we have been told by gentlemen familiar with the condition of affairs in Albany, that corruption has stolen into every department of the Legislature: it has even defiled the sweet hand of charity. Whether that be true or not, we are informed that there is a species of "log-rolling" here which is akin to corruption. Now, sir, what do gentlemen in the Convention propose in order to meet the public sentiment on this subject? They have but two things to propose as far as I have heard. One is to give members a salary; the other is to endeavor to prevent special legislation. Now, sir, in regard to the first—can dishonest men be made honest by paying them a salary? Have thieves ever been prevented from thieving by a voluntary contribution? In regard to the second, the gentleman from Ontario [Mr. Folger] has told us that it is impossible, as I believe it is, to prevent special legislation. We must have it or else abolish the Legislature. But even if we could abolish special legislation, what would be the next step? Suppose we had only general laws, then the effort of an unscrupulous lobby would be to obtain special legislation under the guise of general law. If a man has a special provision which he wishes to have applied to a corporation in which he is interested, he will seek to alter the general law of corporations; if he wishes to release himself from a hated marriage tie, he will seek to alter the gen-



eral law of divorce. There are gentlemen who hear me who know that this kind of effort has been made already in our Legislature—an effort to obtain a general law to meet particular cases; but that which has already transpired is as nothing to that which would be experienced if we should abolish all special legislation. Now, sir, you cannot stop corruption by any constitutional piety or philosophy. You must have men in the Legislature. How to secure them is the problem. I have no faith in increased salaries, no faith in the abolition of special legislation. I only hope, for the sake of New York, that we shall have true and faithful men. How are we to get such men? That is the question. Now, sir, in my opinion the only mode presented to us for obtaining these better men is to take the course presented by this committee. I do not think it will accomplish everything for us, that the reign of virtue will necessarily return in full; but I do believe it will accomplish something; I do believe we will get men to represent the State in the Senate as distinguished from men who represent localities in the Assembly. That, I believe, is the true system. As I have endeavored to show, we are here to organize two houses on the principle of diversity, and the only diversity admissible under our system is that of a larger or smaller constituency. We cannot, as they do in the English Parliament, give representation to the educational interest. We cannot give it to towns and cities as distinguished from counties. The only mode left for us to make it sure that the great interests of the State shall be represented is to furnish in the one house men from the State substantially, and to the other house men from localities; and we do substantially arrive at this result by electing the Senators from large districts. Now, sir, it seems to me that the two great evils from which the State of New York suffers are the spirit of public parsimony, and the spirit of locality. By this public parsimony we do not pay public men what they really earn, and by that spirit of locality we have dwarfed their aims and purposes, and kept them from rising to that position which they would have attained if they had not been obliged to account to a local constituency. As the gentleman from Ontario [Mr. Folger] told us, this constituency will call for an account, and most rigidly exact it, unless the course of their representative, on questions in which they are locally interested, is precisely in accordance with their own views. What have been the objections urged by the gentlemen on the other side to the large district system? They seem to me to resolve themselves into three. One we have heard urged is, that there is likely to be a return of the Albany regency; another, that we should have in the Senate decayed and worn-out politicians; Another, that the voice of the people is against this change. Now, sir, how have the gentlemen heard the voice of the people? Why, in general through the local press. And what is the local press? It is the voice, so far as we know at present, of a single man who has not heard the discussions on this subject, and who, if he did hear them, might change his views; while the members of the Con-

vention are here for the purpose of hearing the discussions and then acting upon them. This same author, Harrington, to whom I have before alluded, though somewhat visionary in many of his suggestions, yet made very many sagacious remarks. Among others, he endeavored to liken the Legislature and the people to two maidens who are dividing a cake between them. One says to the other, "I will divide and you shall choose." And that he says is like the Legislature and the people. The Legislature are to examine, discuss, determine, or to "divide," as he called it, and the people are to choose. I think that is our function here. We are to make the very best Constitution we know how, and then we are to submit it to the people. If the people reject it, I shall not despair. Our thoughts will be on record, and if they are right the people will some time agree to them, and will either send us or others here to put their wishes in form. I hope no one of us will ever adopt a rule which he thinks is radically wrong, merely because he supposes there may be some person or persons among the people who may object to it. Next, sir, in regard to the Albany regency. I think that is an idle fear. The Albany regency is but a word to conjure with. The time has been when it was a power, but it has irrevocably gone. Who is there now to take up the tangled threads, even in this Convention, and hold them in one direction for a single moment? Not one. The mighty men who welded the forces of party are dead or decaying, and they have and can have no successors. The only use that can now be made of the Albany regency is to frighten men from their propriety, as is attempted to be done in this Convention, and as is sometimes done with children in a nursery.

"Panama's maids shall long grow pale  
When Risligham inspires the tale;  
Chill's dark matrons long shall tame  
The froward child by Bertram's name."

Now, finally, what is the only other objection? That we are to have aged men in the Senate—old politicians. This is not to be the era of young men, but the era of old men. I am one of those who believe the Senate has its appropriate name, derived as it is from an assembly of the elder men, and I shall not regret to see it largely composed of that class. The time will come when the younger men, in the ripeness of their years and in their wisdom will reach it; but I am certainly not willing to have it said to us, as old Lord Chancellor Hatton said in Queen Elizabeth's time, of the men in his day. He says, "There are in public life many young men, raw young men, negligent and careless, and I think it a great shame to this Commonwealth that it is attempted to be ruled by such men." Now, sir, without any aspersion at all upon the present Senate, I have only to say, it is no harm, but rather a benefit to a State, to have one body of the Legislature which is filled by the wisdom of the older men, while the other house should be so organized as to represent the activity and earnestness of the younger men in the community.

Mr. HARDENBURGH—I am one of those who oppose this system, which has been correctly

The well-dressed gentleman who had instigated the moving of this notice, and carefully drawn up the bill amending the charter of the wealthy corporation of the city of New York, was around in the hotels mingling in conversation with these anxious gentlemen, and was very soon employed by them to attempt to ferret out the man who was at the bottom of this mischief and of their anxious troubles. They were advised by him to go home, and that this well-dressed operator would attend to their affairs. In a few days thereafter this bill was reported from the proper committee, and immediately up came another two car-loads of corporators, directors, agents, detectives, attorneys, and operators to see about preventing the passage of this injurious bill. Within twenty-four hours after their arrival in the city of Albany, this well-dressed operator, who had been "dead broke" before; and who had succeeded in securing an employment as "lobby" for the corporation, was flush with money, and able to pay all his hotel bills, and meet all his other obligations, including those recognized as honorable among sporting men. The corporators went home, having learned that gas costs something in Albany as well as in New York. In a few days afterward, in some of the New York papers, I saw charges of legislative corruption in connection with this notice and bill, and that the Legislature had been bought; and there seemed then to be two sides, one party charging the Legislature with being bought to interfere with the vested rights of the corporation, which was dividing nearly fifty per cent dividend, and the other party charging them with being bought off from the passage of a just and beneficial measure; so that they got the newspaper name and reputation of being bought to interfere, and bought not to interfere, neither of which was true. Now, sir, this is a specimen of very much of the legislative corruption, so much proclaimed through the newspapers, and probably there were not more than two members in the Assembly who knew anything about the operation that was going on. And nobody at the time knew anything about the motives of the party instigating this move. Now, that, sir, is one way in which charges of legislative corruption are started. Whole bodies of men are stigmatized with being corrupt and dishonest, and with being bought and sold, and here in convention we are working to provide some way to remedy this supposed evil. One gentleman says we must give members of the Legislature better compensation, so they will not be obliged to steal. Another gentleman says we must select them from larger districts, as though we should secure better or abler men. Now, I am one of those who believe that a constituent should be acquainted with the candidate for whom he votes. I believe I can cast my vote as intelligently for a man within my present senatorial district as I could if it was doubled or quadrupled in size. I have no doubt about it. Now, sir, I concur entirely with the gentleman from Ontario [Mr. Folger] that this Convention can present to the people for their adoption a Constitution which will, by the force of its own terms, take from the Legislature the power to legislate upon local

matters, exclusively local matters, which will take out of the Legislature great temptations for log-rolling. I do not intend to say that this system of log-rolling is always corrupt as far as the individual Senator or member of Assembly is concerned. We know that gentlemen, sometimes, to save some great and beneficent measure or act, are compelled to yield to smaller evils in the passage of acts which their better judgment disapproves. In that way a system of log-rolling is sometimes adopted. If you will exclude from the power of the Legislature legislation upon a great many wholly local questions, you will take from them the power of committing what is called "legislative corruption," or log-rolling, to a great extent. We should, furthermore, present a Constitution for adoption by the people that will take away from the Legislature the power of giving away the money of the people without limitation and without constitutional obligation. That undoubtedly, in my opinion, is a source of great corruption. If you cut off the power of the Legislature to grant the money or property of the State, to be raised by taxation from the people, to the thousand and one institutions that are springing up everywhere in the State, you will dry up one source of legislative corruption. Now, sir, for an instance of this kind of general legislative corruption, if the committee will bear with me patiently for one moment, though not in my legislative experience. A country member came to this hall a few years ago. He was utterly ignorant of legislation, ignorant of what was necessary, and above all things ignorant of the chief of abominations known as the general appropriation bill. On reaching that bill, he read it over; he found the salaries of the Governor, Lieutenant-Governor, the State officers and judges, all put down in the bill in accordance with law. He read on and came to appropriations of large sums of money, \$10,000, \$15,000 and \$50,000, to the thousand and one institutions that are springing up in all the large towns of the State. Not knowing how or why the State should tax the people at large to support these local institutions—local in their origin and in their benefits—he moved to strike them out; he wanted an explanation. He was simply, and without delay or discussion, howled down by the combined votes of those from the large towns seeking the money. Buffalo had several institutions that had to have an appropriation. New York had several institutions that had to draw from the treasury. Utica had a few institutions that had to draw from the treasury of the State. Oswego, Rochester and every city, and nearly every large village in the State, had in that omnibus bill an appropriation for institutions that had never been organized under any law, or created by any statute of the State, or by the Constitution, or by authority of the Legislature. Members would not go back upon their local claims, and hence there was a species of log-rolling, by which "if you will vote, Mr. Baker, for Buffalo, I will vote for Montgomery"—if Albany will vote for New York, why, New York will reciprocate the favor of taking the people's money for these private local institutions. This member who was so astounded at the general appropriation bill, and to

Carpenter] when he was discussing the pending question. The question is not whether the term will be four years, or two years, or three years; it is whether it shall be the single district, and whether they are eight or ten, or whether they are thirty-two, is of no consequence here. The question is whether the district, whatever it may be, shall be represented by a single man, not running four men, one under the shadow and wing of another. That is the difficulty I see in any other district system. Now, in 1846, when this system was abolished, it was not because of the fact that there was an Albany regency. It was not because of the fact that the system, in the respect of that concentration of power, had become a failure. Sir, as was shadowed out in the report of the gentleman from Westchester [Mr. Greeley], even in that early day the political thinkers of that hour desired to adopt some plan, to seek out some remedy, by which minorities might be represented. Not having the full knowledge that the distinguished journalist from Westchester [Mr. Greeley] had, they resorted to this system of smaller districts, so that, to that extent at least, minorities might be represented. But, adopt these large districts, and I would like to see how minorities can be represented. Almost every member of this Convention, I think every single member of this Convention, is in favor of a certain sprinkling of representation on the part of the minority in this State, divided as the parties are by simply fifteen or twenty thousand, and yet the one party overwhelmed in both branches of the Legislature. Putting them down into smaller districts you do reach that desired end. That was the object of the Convention of 1846, and it went as far as their knowledge at that time permitted them to go, and I never shall abandon it as far as I am concerned. Now, I think the gentleman who has spoken on this question [Mr. T. W. Dwight], and made his argument in respect to the division of these two Houses—namely, that there should be a distinct and diverse body, the Senate from the Assembly—fell into an error. I differ entirely from him. It was with no idea that the Senate should be older, or that they should be better men, or purer men, or more intelligent men than the House of Assembly, that John Jay, who drafted the Constitution of 1777, and from which the ideas of the Constitution of the United States were taken, first started this idea of two Houses. Will any man deny but that the Assembly should be just as intelligent as the Senate? No man here will deny it at all; none will deny it. What, then, was his purpose? It was simply that the two Houses should differ in respect of the tenure of office, to put one body into power for four years or six years, so that the lower House which came annually into this hall to make and pass laws might be subjected to the check (often necessary in moments of excitement and passion, such as might be illustrated by the know-nothingism of our own day) of the House having a longer term, and that such House might hold that check, and pause until it could be discovered whether the people were ready for the proposed movement. Tenure of office is all that could, and all that was intended to be settled by the

framers originally of this system; and I claim that that is all you want now. I do not understand that, when I vote upon the proposition of the gentleman from Cortland [Mr. Ballard], I am voting at all upon any tenure system; I am voting upon the naked, bare proposition whether we will have this Senate elected by the people directly, or whether we will have the responsibility divided, by electing four or five together; we can discuss the other propositions hereafter. I shall vote, therefore, Mr. Chairman, upon this question, for a single district system as against the compound district system, in favor of the amendment of the gentleman from Cortland [Mr. Ballard], and for the reasons I have given.

Mr. AXTELL—Mr. Chairman, I have listened very attentively to this debate during the time it has been progressing, and I have earnestly desired to be convinced of the necessity and the expediency of adopting the principle embodied in the report of the committee. But up to this time the arguments to which I have listened have failed to convince me of the expediency of adopting large senatorial districts. Those arguments would have force if we were discussing the propriety of leaving the appointment of Senators to somebody outside of the people of this State. If we were proposing that Senators should be appointed, there would be to my mind more of force and pertinency in the arguments which have been presented in support of the report of the committee. I do not understand, if the people are to elect in large districts, how the character of the Senate is to be improved by thus extending the districts. I have failed to see as yet how that is to be done. Is it a fact that the dignity of the Senate would be increased by large districts? I have heard a great deal said on this floor about the "dignity" of the Senate, the importance of having a dignified body, and I have tried to picture to myself a Senate that would realize this ideal of exalted dignity if the views of the gentlemen were to take form in the Constitution. I have thought it was possible that there might be an illustration of the idea of the country parson when he spoke of the dignity of dullness or the dullness of dignity. Is it true, Mr. Chairman, that dignity in the Senate is the main thing to be sought? And is it true that dignity is increased by an increase of territory or an enlarged constituency? Is that true as a matter of fact? Then, if that be true, I submit that when you make a constituency of one hundred thousand you quadruple the dignity of the Senate as compared with the Assembly. And if the proposition of the committee prevail, then the dignity of the Senate will be made as sixteen to one. I submit that no Senate could live under such an accumulation of dignity as that. No system, no mere political arrangement will secure that type of character, that manliness, that broad and comprehensive statesmanship which is necessary in a Senator, if these elements are wanting among the people, and I do not assume that they are wanting. No mere extension of constituency can secure superior talents and qualifications. Take as an example the Senate of the United States (and I have a most profound respect for that body),



up, let me make this suggestion. I suppose it to be true, as well from the census returns, as from our observation, that the population in the interior of this State, outside of the cities, is rather a receding, than an advancing population, or in other words those who live upon farms in the State of New York, are making their farms much larger than they were, and many of the citizens in the western part of the State are selling out and going West, and the population there is being considerably reduced, while upon the sea-board the population is increasing in a ratio entirely unparalleled in the previous history of the State. Sir, the census returns upon which this report is based give the sum of 726,000, as the entire population of the city of New York. Whereas the census taken by the Federal government in 1860, five years previous gives the census return in the city of New York, at 813,000. Sir, the population, as I have already stated, is over one million in that city. Whether you give it five senators or whether you give it six senators, you fail to give the city of New York that fair and equitable ratio of representation which justly belongs to her. Sir, one-fourth of the people of the entire State of New York live upon Manhattan Island, throwing out the tens of thousands who live in Kings county, Queens county, Richmond and Westchester. If you were to divide the people on the ratio of representation, making the number of the inhabitants at 4,000,000, the city would be entitled to eight representatives rather than six. But I will not protract the discussion, My hope is, that in the end some fairer proposition will be made by the majority of this Convention than has been submitted, and seeing no other way to secure what seems to me a better plan, I must vote for the amendment which has been submitted by the gentleman from Cortland [Mr. Ballard].

The question was then put on the first part of the amendment offered by Mr. Ballard: "The State shall be divided in thirty-two districts," and it was declared carried, on a division, by a vote of 79 to 35.

The CHAIRMAN—The question is now on the second part of the proposition of the amendment proposed by the gentleman from Cortland [Mr. Ballard.]

Mr. TOWNSEND—I move that the committee do now rise report progress and ask leave to sit again.

SEVERAL DELEGATES—"No, No".

Mr. BURRILL—I move to reconsider the vote just taken.

Mr. W. C. BROWN—I move that the motion lie on the table.

The CHAIRMAN—The gentleman [Mr. W. C. B.] is informed that it is not in order to lay the question on the table in Committee of the Whole.

Mr. ALVORD—I believe that under the rule this will lie on the table. The same rule governs in committee that governs in Convention. Under a rule of the Convention the motion to reconsider must lie on the table.

The CHAIRMAN—The Chair is of a different opinion. The question is on the motion of the gentleman from New York [Mr. Burrill] to reconsider the vote which has just been taken.

Mr. ALVORD—I respectfully appeal from the decision of the Chair; and I will state my ground of appeal. It has been again and again ruled, from the commencement of this Convention up to this time, that a motion to reconsider as a matter of necessity, under our rules goes over for a day, and as a Committee of the Whole sitting here confined by the terms of our rules and the Convention, we cannot go beyond that. We cannot have any other rules than such rules as obtain in the Convention. In Committee of the Whole all questions of reconsideration, up to this time, have been with the consent of the committee laid over under the rule which governed us in the Convention. We have no right to arrogate to ourselves, in Committee of the Whole power that is not specifically granted to us by the rules of the Convention in that regard. It is for this reason that I most respectfully beg to differ with the Chair in its rulings upon this subject. I trust the Chair will reflect for a moment, and look over the rule as it exists, and decide my point of order well taken, and relieve me from the necessity of appealing to the committee.

Mr. W. C. BROWN—I wish to read rule 28:

"A motion for reconsideration shall be in order at any time, and may be moved by any member of the Convention; but the question shall not be taken on the motion to reconsider on the same day on which the decision proposed to be reconsidered shall take place, unless by unanimous consent; and a motion to reconsider being once put and lost, shall not be renewed, nor shall any subject be a second time reconsidered without the consent of the Convention. If the motion to reconsider shall not be made on the same day or the day after that on which the decision proposed to be reconsidered was made, three days' notice of the intention to make the motion shall be given."

There is another rule I have been requested to read.

"Rule 19. The same rules shall be observed in Committee of the Whole as in the Convention, as far as applicable, except that the previous question shall not apply nor shall the yeas and nays be taken on a division."

The CHAIRMAN—The opinion of the Chair is that the rule is not applicable to proceedings in Committee of the Whole from the nature of the case. The gentleman from Onondaga [Mr. Alvord], appeals from the decision of the Chair. The question before the Committee is, shall the decision of the Chair be sustained.

The question was put on sustaining the decision of the Chair, and it was declared carried on a division by a vote of 49 to 48.

The CHAIRMAN—The question recurs on the motion of the gentleman from New York [Mr. Burrill] to reconsider the vote on the amendment of the gentleman from Cortland [Mr. Ballard] which has just been taken.

Mr. BURRILL—I withdraw the motion.

The CHAIRMAN—The question is on the second proposition of the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. FOLGER—I offer the following amendment.

The CHAIRMAN—A further amendment is not

same denial. But, let me ask, cannot the system of log-rolling to which the gentleman alluded be resorted to just as well, and more successfully, under the system proposed? Will not the combined interest and influence of four be more potent and therefore more to be coveted than that of one? Again, Mr. Chairman, I do not like to change any system, especially in the organic law of the State, unless there are cogent reasons for it, and especially when not demanded by the people. I see no very strong reason for the change in this matter sought to be effected by the report of the majority of the committee. The people have not asked it so far as I can discover. I have not heard a single expression in favor of a change, off the floor of this house. I have made up my mind, for the reasons above stated, that it is not desirable to abandon a system we have tried for twenty-one years with very general satisfaction to the people, as far as I can judge, and return to a system which, after a trial of seventy years, was emphatically condemned by the people. I shall therefore vote for the amendment of the gentleman from Cortland [Mr. Ballard].

Mr. BAKER—I had not intended to participate in the discussion on the report, and now only desire to say, that if the report of the committee is sustained, so far as my county is concerned, we will be entirely content, with the place assigned to us in the senatorial arrangement. But I am opposed to the report of the committee, and am in favor of the single district system. And I will briefly state my reasons. But, first, sir, I will examine for one moment the common and frequent charge we have heard made in this Convention of legislative corruption. A stranger coming into these halls and sitting here a few moments, and hearing the discussion on this subject, would suppose that every member of the Legislature, the present as well as the past, is guilty of felony and ought to be convicted of it. Now, sir, it is a strange idea that intelligent gentlemen in this Convention will get up here and charge that the Legislature is guilty of corruption, when no man can put his finger upon a solitary identical fact or circumstance to prove the truth of these charges, and, for one, unless proof can be furnished to sustain them, I am opposed to making them, and desire to say that I do not believe these wholesale charges of legislative corruption. If I must come to the conclusion that these charges are true upon mere newspaper authority, then I must come to the conclusion that this Convention is also corrupt, for I have seen in several newspapers, since the assembling of this Convention, charges of corrupt designs by parties and cliques in this Convention. It is a very easy thing for newspapers to make charges of legislative corruption—of corruption against a body of men where they will not and cannot designate the party guilty of the corruption alleged, but charge it generally upon the Convention, or Senate, or Legislature, without specifying the crime or person guilty of perpetrating it. This is unjust and unfair, cowardly and sneaking. If I, as a member of the last or present Legislature, call upon any member of this Convention who makes such flippant charges of corruption, to put his finger upon the corrupt act I have

been charged by him as committing, the honorable gentleman who made such charge is bound to specify when and where, and upon what occasion, I have been so guilty of corruption. Now, sir, I do not take it as a conceded fact, or as a conceded opinion of the people founded upon facts that are known by the people or by anybody in this Convention, that the Legislature is corrupt, according to any fair or legal interpretation of that word. It is no very difficult thing, sir, for newspaper writers and correspondents to make charges of legislative corruption, concealing at the same time, the dishonest or fraudulent motive that instigated the charge. A legislative reminiscence of some twelve years ago that occurred in this hall, which I might mention would illustrate fairly about the way in which these charges are frequently and commonly brought against the Legislature. Since the Convention of 1846 a rural member from the interior of New York, had the fortune to locate himself in "Sleepy Hollow," in this hall; sitting at his right hand was another rural member, equally green as rural, from the "secluded district." One day a well-dressed gentleman came from the cloak-room and presented to the honest old gentleman from Schoharie a notice, requesting him to present it to the Legislature. The old gentleman very kindly consented, when that order of business came up, to present the notice. The telegraph having conveyed the intelligence to New York the next morning the hotels in the city of Albany were seen to be filled with the president, secretary, cashier, directors and attorneys of a certain wealthy moneyed corporation, located in the city of New York. They immediately instituted a detective system to discover who had introduced the notice. They went to the honest old rural member from Schoharie and inquired if he had introduced the notice. He didn't know exactly whether he had or not; but stated that a well-dressed, good-looking young gentleman had handed him a paper which he had consented to pass up to the Speaker's chair, when under that order of business, not knowing its contents. "Well," said the detective, "it is a bill relating to our corporation; we would like to know who handed you the paper." The old gentleman could not recognize the man who handed him the paper, but promised to point him out if he saw him again. After spending a few days here trying to ferret out the mischief-maker, the attorneys, directors and officers of this corporation went back to New York. They had no sooner left the city of Albany than this same operator appeared to the old Schoharie member and requested him to introduce the bill pursuant to the notice he had so kindly consented to give. The old gentleman looked at and examined him, so as to be able to recognize him thereafter, and introduced his bill—a bill to amend the charter of a certain corporation in the city of New York, whose stock was then worth 180. Immediately upon telegraphic notice reaching New York they came—the entire corporation, with their attorneys, agents and directors—to discover who was at the bottom of this intermeddling and intended mischief. They located themselves in the various hotels of the city of Albany.

always preferred that the details of the partition of States into districts, should be left to the Legislature. That the gentleman's amendment proposes—and we remove from the present determination of what we regard as a vital question between compound and small districts, that disturbing element which has controlled the vote of the member from Richmond [Mr. E. Brooks] against his views of the interest of the State. I hope, therefore, that we may proceed to vote without much longer delay, as the whole subject has been discussed on the amendment heretofore considered.

Mr. GREELEY—My objection to the amendment just proposed by the gentleman from Albany [Mr. A. J. Parker], is this, that it utterly fails to secure the end desired. Take a very simple case, the city of New York. The vote there of one party is more than two to one of the other. It is perfectly easy under that system for the one party to elect every single member each time with moral certainty. They could divide their votes so as to give all four of their candidates at least ten thousand majority over the highest opposing candidate. And so you will find it to be in the St. Lawrence district, on the other hand, that the republicans can elect every one of their four Senators, in defiance of this regulation. You deny to the people the right to vote for as many Senators as they are to choose, and the party largely in the majority will certainly manage to elect every one of their candidates for Senator. You accomplish nothing by your effort, except, possibly, in very closely balanced districts. You simply decide that one party must have four votes to every three votes of the other party, in order to carry the election; and it will be the case in two-thirds of the districts of the State, that one party or the other will have votes enough to elect all the Senators notwithstanding this arrangement. Now, Mr. Chairman, the proposition which I submitted has this effect: if any party has one voter where the other party has three—that is, if one-fourth of all the voters of that district are of the minority party—that minority party can certainly elect one Senator. Suppose there are of the majority in a certain town twenty thousand voters, and in the minority seven thousand voters—recognizing that as an extreme case. Now, seven thousand voters triplicated make twenty-one thousand votes for one Senator. It is not possible for twenty thousand voters to give three Senators as many votes as the minority can give their one Senator under my plan. But there is no such result under this plan. By the scheme of the gentleman from Albany [Mr. A. J. Parker] the majority can easily give every one of their four Senators votes enough to beat the minority out of sight. [Laughter.] Now, I desire the Convention, as I may not have another opportunity, to give a few moments thought to this topic of the representation of minorities. Some gentlemen have said here, that under the proposition I made, it would be perfectly feasible to let the minority of voters elect a majority of the Senate. Let me show why that is not so. Say a district has 24,000 voters on one side and 26,000 on the other, which is an extreme case. Now, each party understands perfectly well

that it can elect but two Senators. Each struggles to get the second man. Each nominates two candidates in that district, and each divides its vote. Suppose the district is composed of the two counties of Rensselaer and Albany, which are together. Each party will put up a candidate, one in each county. In each county each party will vote for the candidates of the party; but each will give the vote which the party in the county is entitled to give to the third man, to their local candidate; that is, they will duplicate the vote for the second man. Each party in Rensselaer will vote for the Albany candidate, and will duplicate the Rensselaer candidate's name on the ballot. The result will be that the party having 26,000 voters in the district will have 39,000 votes for its two candidates, and the party having 24,000 voters will have 36,000 for its two candidates. I say that it is simply impossible, under the plan I submitted, that the majority in a given district should not elect a majority of the Senators, and it is all but impossible that they should elect any more than two. There is but one possible district in this State where it might be otherwise. That is, you might carve a district out of the city of New York. You might take the 4th, 6th, and 14th wards of that city, and add on some other portions of the city, and perhaps make a district which would elect all the democratic Senators; but if you did so it would be because there was such an enormous majority that that majority could fairly be said to claim all the Senators. By the plan I propose, if you look at it carefully, you will elect twenty-four republican and twenty-one democratic Senators so long as the republicans shall have the majority they now have of 15,000 voters in the State. The moment that majority shall change, you will have a democratic majority of Senators. I do not wish the party to which I belong to have any more votes in the Legislature than its proportionate vote of the people, and when the people shall turn against it I then want the majority against it here, and my plan will give that result. The Legislature will change when the people change as it ought to do. Some gentlemen have said that "minorities are now represented." No, no, Mr. Chairman, local majorities sometimes partially balance each other; but there is now no representation of the minority. And it has become so now that in Vermont, Massachusetts and Maine the minority party has no member of the Senate whatever, and but a very few in the lower House; although in Maine the democratic vote is 41,600, yet the democratic party has not one Senator. I have no doubt it is best for the State, and best even for the dominant party in that State, that the minority party should have such a representation in the other House as its numerical strength entitles it to, and that for all purposes, it is best that there should be that balance and equation of parties in the Legislature as will conform to the relative numbers of the respective parties among the people. I beg gentlemen to consider, also, how admirably the State divides into fifteen districts such as I propose. The gentleman from Ontario [Mr. McDonald] stated that he had carefully observed in the western part of the State that districts about



find these things in it, and who had made a move to strike it out, and who was so howled down was very kindly informed by a more experienced member that he himself had been caught in the same way a few years before, and resorted to this device to get out of the difficulty. He had come to the appropriation bill, and found these items in it appropriating the money of the people of the State for mostly private and local institutions all over the State, here, there and everywhere; had tried to strike them out, and had utterly failed to do so. He went home and complained to his wife of the struggle he had had on the subject in the Assembly. An old lady who was taking tea with his wife says to him, "Why, la! Mr. P., I can tell you exactly how these things are done, and I advise Mr. Member to do the same thing. When we wanted an institution in a place I called a few of my benevolent neighbors together, a few of our old grannies of both sexes, and proceeded to the organization of our institution. I was appointed president, and Neighbor Such-a-one was appointed secretary, and Auntie Such-a-one as treasurer. We had all the rest of our neighbors put in as executive committee men. We organized an institution, and gave it a beautiful, poetical and angelical name. We sent up word to our representatives in the Legislature at Albany that they must give us an appropriation; and what do you think? We got \$20,000 just by the asking." The indignant and astonished member continued that he requested his wife, before the next night, to organize a society or "institution," with the intent that if he could not strike out these appropriations he would ask a portion of them for his "institution." The next night, when the gentleman went to tea, his wife handed him a paper with the names of the president, treasurer, and executive committee of the new "institution," and enabled him to state in the Assembly that night that there was a charitable institution organized in his village or city, and that the benevolent, charitable and kind-hearted members of his institution had taken money out of their own pockets, had gone out into the streets and bestowed charity upon the poor and needy, and moved in Committee of the Whole for an appropriation for his "institution," and the Legislature gave him fifteen thousand dollars; they gave it without even inquiring how long the institution had existed, the place where it was in operation, the character of its originators, or the kind, extent or object of its benefactions, but upon the motion of the gentleman from ———, whose sense of justice had prompted him to ask the Legislature to refrain from such profligate and unjust grants of the people's money to private, local and sectarian "institutions." They granted away \$15,000 more of the people's money to quiet his opposition to the general plunder perpetrated under the good name of charity—and a certain town had an "institution." This, sir, is one of the modes of legislative corruption practiced here in Albany from winter to winter, and that, too, without any intentional or conscious fraud on the part of individual members instrumental in the perpetration. The remedy for these evils will not be found in the organization of large or small sen-

atorial districts, but this Convention may provide a remedy by inserting in the draft of the Constitution to be presented to the people, a perpetual prohibition and limitation upon the power of the Legislature to give and grant away the money of the people at large to support these numerous private, local, and many times sectarian institutions, springing up all over the State with such alarming frequency as to excite the general apprehension that these pretended charities are unjust and insatiable leeches upon the public treasury of the people—

Here the gavel fell, the gentleman's time having expired.

Mr. E. BROOKS—I do not rise to protract this discussion.

A DELEGATE—I hope not.

Mr. E. BROOKS—The gentleman will be gratified. I shall not occupy the time of the committee more than two or three minutes. I find a divided duty. I am as strongly as any gentleman, almost, who has spoken, in favor of the large district system. I would be glad to see it adopted by this Convention. But when I contemplate the two propositions which are before us (throwing my amendment entirely out of the question), I find a report submitted here on the one hand, asking that this State shall be divided into eight senate districts, and that there shall be elected four Senators in each of those districts, giving an extra Senator to the city of New York. When I examine that report I see the precise result I stated on Friday last, that in the district which I represent 130,000 people are practically disfranchised upon a question of equality, or, throwing out the question of inhabitants, nearly 80,000 citizens more than in the adjoining district or if we compare voters, some 15,000 voters more, are required to make a Senator in that district than that in the adjoining district. If we compare the question of the assessment of property, I find in the district which I, in part, represent on this floor, that it requires just twice as much property, twice the amount of taxation to make a Senator in that district, as it does in either of the fourth, fifth, sixth and seventh districts. Now, I am unwilling, after such a report as this, presented by a very respectable committee supposed to represent the views of the majority in this body to vote for the particular plan which has been just presented to this committee and to this Convention. But while I admit the force of the argument which has been presented here to day in favor of large districts, and while my observation of four years, experience in the Senate and as a journalist and citizen, teaches me that there will be much better representation under the larger district system than under a small district system, I fail to find any assurance in the action of this Convention that these districts can be so arranged, or will be so arranged, as to result in any equitable principle in the end. I, therefore, am reluctantly compelled, in the hope of securing more justice to those living upon the sea-board and my immediate constituents, to vote for the amendment which has been introduced by the gentleman from Cortland [Mr. Ballard], and I shall give my vote accordingly. Sir, while I am

rule. Talk about the minority not being represented! Why, sir, a minority is represented by its delegates whether they be republicans or whether they be democrats. I dislike to hear this assumption of absolute partisanship which gentlemen are so ready to make in this Convention. In my mind, sir, there is a clear distinction between the political representative and the civil or local representative, although both characters may be combined in the person elected to represent. The candidate for legislative office may, and should, representfully and faithfully the opinions and measures of his party on great national and State questions. But I contend, sir, that, when elected, he is no longer partisan for his district or the interests of his district. He may be partisan, and strictly partisan, upon the great issues which come up to agitate the whole people, on great State questions, which carry State policy or defeat it. But for his own district, if he be a mere partisan, he is not worthy a place in the councils of the State or nation. I deprecate the assumption or recognition of partisanship which lies at the bottom of so much mischief, and of so much corruption in the Legislature. The people should hold their representatives strictly to account to be true representatives of their towns and districts, whenever the local interests of those towns and districts require representation in the Legislature. I believe, sir, that a measure vital to a township or village, one which interests large numbers of the people of that district will not be unsafe in the hands of a political opponent who represents that local district as it ought to be represented, in other words, honestly and intelligently. Why should I not trust a democrat as well as a republican, if he be an honest man, representing my district? If he does not represent my district truly, the majority of the people will ascertain that fact and will give him leave to stay at home on another occasion. I believe, sir, that no matter how strict or straight-out may be a member of the Legislature in his political opinions, he must always, if he be a faithful man, regard the interests of his locality as the business on which he is sent to the Legislature. If this be not the fact, what becomes of local or district representation? What virtue or significance is there in the "representative of a district" if the man elected as such fails to represent such district, and the wants and claims of its people, without distinction of party? I hold that the district member is the delegate of all the people who took part in the election which returned him to a seat. He is no mouthpiece or instrument of a mere accidental majority, or, it may be, only a plurality. Once elected, he becomes a depository of the trust of the people, or he becomes recreant to his trust, and no proper representative. If this is not so, then if a member could be chosen out of twenty or forty candidates by a plurality of only one or two hundred votes, he must be the representative of that fragment of the people of his district, instead of all the people. I deny and reject all such assumptions of partisan responsibility in a representative, and partisan responsibility only. I hold the political representative fast to his political faith, and to the principles and policy of that

faith, developed in State issues and State measures which know neither locality nor class. But I hold the civil or local representative, though he be the same man, just as fast to his duty as a delegate of the entire people of the district from which he comes. The people of that district are his masters and principals in regard to all local interests. The majority of that people will take care of him and his personal interests. If a wrong be perpetrated by the majority of one year, I believe in making that majority a minority of the next year, and thus correcting the wrong. A democratic system presupposes this majority rule. It is the only lever we have for uprooting and overthrowing a corrupt and domineering partisanship. It is the natural revolution of opinion, operating like the healthful force of a thunderstorm. By it and through it, the commonwealth shall be kept pure and strong. If we have a majority continually ruling and the minority merely represented as a minority, we should be in a state of stagnation. Sir, we require these abrupt changes; we must have these uprisings of minorities to keep the majorities in order, and preserve a robust, healthy commonwealth. Therefore, I consider all these new schemes for the representation of minorities, from whatever source they come, as mere obstructions, more poetical than practical.

Mr. N. M. ALLEN—Mr. Chairman—

Mr. FOLGER—I move that the committee now rise, report progress and ask leave to set again.

The question was put on the motion of Mr. Folger and it was declared carried, on a division, by a vote of 69 to 37.

Whereupon the committee arose, and the President resumed the chair in Convention.

Mr. FULLER from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Legislature, its Organization, etc., had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The PRESIDENT announced the question to be on granting leave.

Mr. GREELEY—I move that leave be granted with instructions to the Committee of the Whole to report to the Convention at one o'clock P. M. to-morrow.

The PRESIDENT—The gentleman from Westchester [Mr. Greeley], will send his amendment to the Secretary.

Mr. E. BROOKS—I submit that the amendment of the gentleman is in the nature of a resolution, that it amounts to that, and must lie over under the rule.

The PRESIDENT—The Chair holds that it is within the province of the Convention to make such instructions.

Mr. WEED—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Weed, and it was declared lost.

Mr. ALVORD—I trust that we shall not have a repetition of the same kind of procedure that we had a few days since when there was up for consideration before this Convention the question of suffrage. If we are to continue thus in the

now in order, there being two amendments pending.

The question was then put on the second division of the amendment of Mr. Ballard, being the provision that each district shall choose one Senator, and it was declared carried.

The CHAIRMAN then announced the question on the third subdivision of the amendment offered by Mr. Ballard, being the provision in reference to the apportionment of the State into thirty-two senate districts.

Mr. WEED — May I ask if, in the opinion of the Chair, an amendment to substitute will be in order, if the substitute offered by the gentleman from Cortland [Mr. Ballard] is adopted? I ask it with reference to the vote upon the coming proposition?

The CHAIRMAN — It will depend upon what the amendment is.

Mr. WEED — Any amendment that is germane will be in order?

The CHAIRMAN — It will.

The SECRETARY commenced to read the pending division of the amendment of Mr. Ballard.

Mr. CONGER — I desire to ask whether the apportionment now being read by the Clerk is precisely the same as that contained in the Constitution of 1846 as amended by law last winter?

The CHAIRMAN — The Chair is informed that it is.

Mr. BALLARD — As some of the gentlemen have not been here during the debate, I will state that the distribution of territory is the same as it now stands in the session laws of 1866.

The question was then put on the third division of the amendment of Mr. Ballard to the amendment of Mr. E. Brooks to the second section reported by the committee, and it was declared carried.

Mr. A. J. PARKER — I suppose an amendment is now in order.

The CHAIRMAN — The Chair is of opinion that it is.

Mr. A. J. PARKER — I wish to offer an amendment which I think will secure all the advantages that have been hoped for from larger districts as the question has been discussed here, and which will also secure a continuous representation in the Senate, one-half only going out of office every two years. And it will secure what I deem still more important, the representation of minorities, by providing that four Senators shall be elected in each of the eight districts to be apportioned by the next Legislature, and that no elector shall vote for more than three candidates. This will be a means of representing minorities throughout the entire State, and it will be the first introduction of that mode of representation which has been recognized in any of our legislative bodies. It will answer the very purpose that many of us hoped to secure by voting for the single district system, and it will secure the representation of minorities much better than the single district system, because it secures them in every district of the State. I will read the substitute that I propose to offer for the second section:

SEC. 2. The Legislature for 1868 shall divide the State into eight senate districts, to be numbered from one to eight inclusive; each district to contain, as nearly as may be, an equal number

of inhabitants, excluding aliens. No county shall be divided except it shall contain a greater population than is necessary for one Senate district.

There shall be thirty-two Senators, four to be elected in each senate district. The term of office shall be four years, except that the Senators chosen at the first election, in the first, third, fifth and seventh districts shall hold their offices for two years only.

The first election shall take place at the general election in 1868, and no elector shall, either at the first or at any subsequent election, vote for more than three candidates.

To carry out this system by which minorities are to be represented, you provide that no elector shall vote for more than three candidates. But it is indispensable that four should be chosen at that election. That is accomplished by having the elections take place at alternate periods in the different districts. In the first, third, fifth and seventh, they elect at first for two years which simply puts the system in operation. After the first election, they always choose for four years, and in all cases in all the districts they elect four candidates at every election. In voting for four Senators no elector votes for more than three candidates. I believe this will accomplish the object in view by those who favor larger districts and I believe it will also answer the wishes of those who have voted for single districts, upon the principle that it secured the representation of minorities. I voted for the smaller districts for that reason, and I know of many others who voted for it for the same reason. Now, a wish has been expressed in this room and elsewhere in favor of having minorities represented. One system has already been presented by the distinguished delegate from Westchester [Mr. Greeley]. It is certainly well worthy of examination. But it does not seem to me as practical as the one I offer. I propose one that is simple, and which the whole people can readily understand, when this matter is submitted to them, which will admit of no frauds, and which I believe will answer the object in view. I admit it does not secure an exact representation of minorities, but it secures a representation, to some extent, of minorities in every district of the State. In every district the minority will be represented by one-quarter of the Senators from that district — one of the four Senators. I, therefore, offer this amendment.

Mr. EVARTS — In the position in which the Committee now finds itself placed, Mr. Chairman, I shall take great pleasure in supporting the amendment of the gentleman from Albany [Mr. A. J. Parker], supposing that hereafter any modification suggested as to a classification of the senatorial districts, permitting two to be replaced every year instead of four every two years, and which will not infringe upon the principle of his arrangement at all, may be introduced and receive perhaps the assent of the committee and of the Convention. This measure does not necessarily include the proposition of the final adhesion of the committee or certainly of the Convention, to this particular form of minority representation or even perhaps to any form of minority representation. For my own part, I have



hundred and sixty-seven, shall be strictly applied to that purpose, and to no other purpose or object whatever.

The said several debts shall be fully paid by the first day of October, 1878, and if in any fiscal year there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year, unless in one or more of the years before such deficiency shall have occurred, there shall have been appropriated to said sinking fund over and above the said sum of \$2,418,000, a surplus sufficient to make up said deficiency. The tax authorized to be levied to provide for the sinking fund to pay the floating canal debt, is hereby suspended after the first day of October, 1867.

§ 4. After the debts specified in section two are fully paid or provided for, according to the provisions of section three, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall, in each fiscal year, be paid into the treasury of the State to pay the amount advanced for canal purposes by taxation, specified in the first section, and the interest thereon, until the whole amount so advanced, with interest at five per cent per annum, shall be fully paid, and until any amount hereafter advanced for canal debts or other canal purposes, with interest thereon at five per cent per annum, shall be fully paid.

§ 5. After complying with the provisions of the third and fourth sections of this article, and after paying said expenses of collection, superintendence and ordinary repairs, the surplus revenues of the canals shall, in each fiscal year, be disposed of for the improvement of the canals, or in such other manner as the Legislature may direct, but shall at no time be anticipated or pledged.

§ 6. All sums which shall be paid into the treasury under the provisions of section four of this article, shall be appropriated and applied in each fiscal year as follows, viz.: Until the debt specified in the first section as the bounty debt, or the debt created in renewal thereof as hereinafter provided, shall be paid or provided for, the said sum or sums shall be appropriated and set apart to the sinking fund provided for the payment of said debt, or the said renewal thereof, and the tax to supply said sinking fund shall be correspondingly reduced. The Comptroller is hereby authorized to renew the said bounty debt or any part thereof, by extending the time of its payment to the first day of October, 1885, and to issue stock for that purpose, which he may apply either in exchange for the outstanding stock, or by sale in the usual manner, and the application of the proceeds thereof to the purchase of the outstanding stock. The stock so to be issued shall not bear interest to exceed seven per cent per annum, payable semi-annually, and shall be exchanged or negotiated on the best possible terms, and in no event at less than par, nor at a lower rate than the outstanding stock can be purchased for at the time the sale or exchange shall be effected. The principal and interest of the stock hereby authorized to be issued shall be secured by a sinking fund to be provided for in accordance with the provisions of the fourteenth

section of this article. After the said bounty debt and the said renewal thereof shall be paid or provided for, the sum or sums so paid into the treasury shall be appropriated toward the ordinary and necessary expenses of the State government; and if in any year there shall be more than sufficient paid into the treasury for that purpose, the surplus may be disposed of by the Legislature.

§ 7. The claims of the State against any incorporated company, to pay the interest and redeem the principal of the stock of the State, loaned or advanced to such company, shall be fairly enforced, and not released or compromised, and the moneys arising from such claims shall be set apart and applied to the payment of said stock, so loaned, or to repay the money which may be advanced to pay the same.

§ 8. Every contribution or advance to the canals or their debt, from any source other than their direct revenues, shall be repaid into the treasury, with interest, for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the debts specified in section number two; and except to provide for the payment of the debts specified in section number two, no tax shall hereafter be imposed upon the people of this State for works of internal improvement or their debts unless authorized by a vote of the people according to section fourteen of this article.

§ 9. The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the State; but they shall remain the property of the State, and under its management forever.

§ 10. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the objects to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 11. Neither the credit, money, or property of the State shall in any manner be given or loaned to or in aid of any individual, association, or corporation.

§ 12. The State may, to meet casual deficits or failures in revenues, or for unexpected expenses not provided for, temporarily contract debts; but such debts, direct and contingent, singly or in the aggregate, shall not at any time exceed one million of dollars, and the moneys arising from the loans creating such debts shall be applied to the purposes for which they were obtained, or to repay the debt so contracted, and to no other purpose whatever.

§ 13. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

Committee of the Whole in the future to such a length, we shall be compelled by some action of the Convention to shorten up the time in which we can discuss questions. We can very well determine in the Convention that upon each separate section of any article submitted to us the Committee of the Whole shall, upon a certain time and hour stated, take a vote upon that section, and in that way, so far as the Committee of the Whole is concerned, we will enable it, at some definite period, to report to the Convention. But in taking a portion of this business into the Convention, by reason of having only gone through with a small portion of the report in Committee of the Whole, makes the Convention, for a portion of the time, for all practical purposes, a Committee of the Whole. I will act with the gentleman from Westchester [Mr. Greeley], or the other gentleman, on a proposition which shall arrange that the Committee of the Whole shall be instructed, at a certain time, to take into consideration the first section, at another hour the second section, another hour the third section, and thus fix a time when a vote shall be taken upon each, so that the whole matter will have been wholly gone over before it is brought before the Convention, and which will thus limit the time of debate, as it ought to be limited, to matters pertaining to the subject and proposed by way of amendment in Committee of the Whole. By this means we shall put an end to our labors and arrive at a result.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger for the previous question, and it was declared carried.

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#### ARTICLE —.

SEC. 1. The outstanding debts of the State and other liabilities for the payment of which the canal revenues are pledged by the terms of the Constitution of 1846, and the amendment of 1854, are the following on the 1st day of July, 1867:

The old canal debt of 1846 (so called),....	\$3,258,060 00
The general fund debt,.....	5,642,622 22
The canal debt under amendment of 1854,	10,807,000 00
The floating canal debt,.....	1,700,000 00
Advances to the canal debt sinking fund and other canal purposes, by taxation since 1846, and simple interest at five per cent,.....	18,007,289 68
Making an aggregate of.....	\$39,414,971 90
The debt of the State for which the canal revenues are not pledged or liable, is the bounty debt (so called) of.....	26,944,000 00
Besides which is the contingent debt of the State, of,.....	218,000 00

§ 2. The several debts specified in the preceding section, designated as the old canal debt of eighteen hundred and forty-six, the general fund debt, the canal debt under the amendment of eighteen hundred and fifty-four, and the floating canal debt, amounting in the aggregate to \$21,407,682.22 on the first day of July, 1867, shall be paid as provided in the next section.

§ 3. After paying the expenses of collection, superintendence and ordinary repair, there shall be appropriated and set apart in each fiscal year, commencing on the first day of October, in the year one thousand eight hundred and sixty-seven, the whole of the remaining revenues of the State canals, as a sinking fund, to pay the interest as it falls due, and redeem the principal of the several debts specified in section two of this article, until the said several debts shall be fully paid or provided for; and the principal and income of said sinking fund, together with the principal and income of the sinking funds now provided for the payment of said debts, which shall have accumulated on the first day of October, eighteen

hundred and sixty-seven, shall be strictly applied to that purpose, and to no other purpose or object whatever.

The said several debts shall be fully paid by the first day of October, 1878, and if in any fiscal year there shall not be contributed from said revenues at least the sum of \$2,418,000, the deficiency shall be supplied by taxation the next year, unless in one or more of the years before such deficiency shall have occurred, there shall have been appropriated to said sinking fund over and above the said sum of \$2,418,000, a surplus sufficient to make up said deficiency. The tax authorized to be levied to provide for the sinking fund to pay the floating canal debt, is hereby suspended after the first day of October, 1867.

§ 4. After the debts specified in section two are fully paid or provided for, according to the provisions of section three, the remaining revenues of the canals, after paying the said expenses of collection, superintendence and ordinary repairs, shall, in each fiscal year, be paid into the treasury of the State to pay the amount advanced for canal purposes by taxation, specified in the first section, and the interest thereon, until the whole amount so advanced, with interest at five per cent per annum, shall be fully paid, and until any amount hereafter advanced for canal debts or other canal purposes, with interest thereon at five per cent per annum, shall be fully paid.

§ 5. After complying with the provisions of the third and fourth sections of this article, and after paying said expenses of collection, superintendence and ordinary repairs, the surplus revenues of the canals shall, in each fiscal year, be disposed of for the improvement of the canals, or in such other manner as the Legislature may direct, but shall at no time be anticipated or pledged.

§ 6. All sums which shall be paid into the treasury under the provisions of section four of this article, shall be appropriated and applied in each fiscal year as follows, viz.: Until the debt specified in the first section as the bounty debt, or the debt created in renewal thereof as hereinafter provided, shall be paid or provided for, the said sum or sums shall be appropriated and set apart to the sinking fund provided for the payment of said debt, or the said renewal thereof, and the tax to supply said sinking fund shall be correspondingly reduced. The Comptroller is hereby authorized to renew the said bounty debt or any part thereof, by extending the time of its payment to the first day of October, 1885, and to issue stock for that purpose, which he may apply either in exchange for the outstanding stock, or by sale in the usual manner, and the application of the proceeds thereof to the purchase of the outstanding stock. The stock so to be issued shall not bear interest to exceed seven per cent per annum, payable semi-annually, and shall be exchanged or negotiated on the best possible terms, and in no event at less than par, nor at a lower rate than the outstanding stock can be purchased for at the time the sale or exchange shall be effected. The principal and interest of the stock hereby authorized to be issued shall be secured by a sinking fund to be provided for in accordance with the provisions of the fourteenth

section of this article. After the said bounty debt and the said renewal thereof shall be paid or provided for, the sum or sums so paid into the treasury shall be appropriated toward the ordinary and necessary expenses of the State government; and if in any year there shall be more than sufficient paid into the treasury for that purpose, the surplus may be disposed of by the Legislature.

§ 7. The claims of the State against any incorporated company, to pay the interest and redeem the principal of the stock of the State, loaned or advanced to such company, shall be fairly enforced, and not released or compromised, and the moneys arising from such claims shall be set apart and applied to the payment of said stock, so loaned, or to repay the money which may be advanced to pay the same.

§ 8. Every contribution or advance to the canals or their debt, from any source other than their direct revenues, shall be repaid into the treasury, with interest, for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the debts specified in section number two; and except to provide for the payment of the debts specified in section number two, no tax shall hereafter be imposed upon the people of this State for works of internal improvement or their debts unless authorized by a vote of the people according to section fourteen of this article.

§ 9. The Legislature shall not sell, lease, or otherwise dispose of any of the canals of the State; but they shall remain the property of the State, and under its management forever.

§ 10. No moneys shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law, nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation, or continuing or reviving an appropriation, shall distinctly specify the sum appropriated and the objects to which it is to be applied, and it shall not be sufficient for such law to refer to any other law to fix such sum.

§ 11. Neither the credit, money, or property of the State shall in any manner be given or loaned to or in aid of any individual, association, or corporation.

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The general fund debt,.....	5,642,000 00
The canal debt under amendment of 1854, 10,507,000 00	
The floating canal debt,.....	1,700,000 00
Advances to the canal debt sinking fund and other canal purposes, by taxation since 1846, and simple interest at five per cent,.....	18,007,200 00
Making an aggregate of.....	\$39,414,971 00
The debt of the State for which the canal revenues are not pledged or liable, is the bounty debt (so called) of,.....	26,944,000 00
Besides which is the contingent debt of the State, of,.....	213,000 00

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§ 3. After paying the expenses of collection, superintendence and ordinary repair, there shall be appropriated and set apart in each fiscal year, commencing on the first day of October, in the year one thousand eight hundred and sixty-seven, the whole of the remaining revenues of the State canals, as a sinking fund, to pay the interest as it falls due, and redeem the principal of the several debts specified in section two of this article, until the said several debts shall be fully paid or provided for; and the principal and income of said sinking fund, together with the principal and income of the sinking funds now provided for the payment of said debts, which shall have accumulated on the first day of October, eighteen

The fourth section provides for the repayment into the treasury of advances drawn from the people by taxation since 1846, and used in payment of canal debts, and in the construction and improvement of the public works.

These advances were made under the following pledge contained in the Constitution of 1846, for their reimbursement: "Every contribution or advance to the canals, or their debt, from any any source other than direct revenues, shall, with quarterly interest at the rates then current, be repaid into the treasury for the use of the State out of the canal revenues, as soon as it can be done consistently with the just rights of the creditors holding the said canal debt."

The amount of principal of these advances is,..... \$14,396,767 97  
Simple interest at 5 per cent,..... 3,610 521 71

Total..... \$18,007,289 68

Although the requirement in the Constitution is, that these advances shall be repaid with quarterly interest at the "then current rates," the committee have deemed it advisable to add simple interest only, and at the lowest rate at which the State has borrowed any considerable sum of money. From the earliest period in the history of the public works, it has been deemed unjust and improper to impose taxation upon the people for their construction or improvement. All parties have regarded the public works as a trust in the hands of the State, to be made self-sustaining on the one hand, and not a means of profit to be used for any than their own purposes, on the other. Advances therefore, from other sources than their direct revenues, have always been deemed a legitimate charge upon their revenues, to be returned as soon as practicable.

The Convention of 1846, by the provisions of article 7, in the present Constitution, intended to make a full settlement between the canals and the general fund of the State for advances made prior to that time, which was ratified by the people, and has since been regarded by all officers of the government and the people as a finality upon that subject, and then, having provided for the payment of the debts of the State in a shorter period than the revenues would be likely to pay, the Convention incorporated into the Constitution the foregoing pledge.

When the outstanding debts are paid, the time will have arrived when this obligation is to be fulfilled, and the committee deem it but an act of imperative justice, demanded alike by established policy and good faith, and by constitutional obligation imposed and exacted by the people themselves, that definite and certain provision be made for the return of these sums to the treasury, from the revenues of the canals, for the use of the people of the State. If these sums had not been thus advanced, the canal debts would have been correspondingly larger than they now are, and but for the pledge in question the taxes would never have been tolerated.

The sixth section provides for a definite disposition of all sums, which may be returned to the treasury to pay these advances, in a manner that will reduce taxation upon the people to the extent of the sums so returned.

A proposition has been made to the committee to authorize the creation of an additional canal debt of \$12,000,000, to be used in commencing a new enlargement of the present enlarged canals, by enlarging the locks thereon, and make such debt a charge upon the revenues of the canals prior to the payment of any portion of the advances before referred to.

It is claimed that the expenditure of this money will largely increase the capacity of the canals, cheapen transportation, and secure a largely increased amount of business.

The committee have considered this proposition, together with such reasons as have been offered in favor of it, and have arrived at the conclusion that it would be unwise to adopt it, at this time, as a part of the organic law of the State.

The committee do not deem it necessary, nor within the authority conferred by the Convention, to elaborate their views upon this question, and they shall content themselves with brief and general reasons for opposing the proposed scheme of debt and expenditure.

The present enlargement of the canals is but just completed. The State has been engaged in the work more than thirty years, and has expended upon the work \$39,425,334.32. A water-way of seventy by seven, with expensive and permanent structures has been secured, capable of transporting boats of 250 tons burden. It is claimed that \$12,000,000 will accomplish the proposed work, but according to all the past history of the State in constructing public works, the expenditure will double that sum.

It is proposed to undertake this work when materials and labor are extravagantly high, and when the expense of it will be double that of ordinary times. It is assumed that the demand for further expenditure will cease when the locks are enlarged, but enlarged locks may necessitate an enlarged water-way and a change of other structures, involving tens of millions more of debt and expenditure.

Under these circumstances, and in view of the financial condition of the State and country, the committee believe such a project ought not to be entertained without the existence of the clearest necessity and the most pressing reasons, and they are satisfied that neither necessity, nor sound policy, whether considered with reference to the canals themselves and their business, or the interests of the people at large, will justify or even excuse its adoption at the present time.

The capacity of the Erie canal to do business has never been reached, and scarcely approached. This is true with the canal in alleged bad repair, and with only the most ordinary force and facilities for passing through the locks where obstructions are likely to occur.

According to an estimate of the present State Engineer, the full capacity of the Erie canal will not be reached before 1882, estimating a uniform increase of business equal to the past twenty years.

In 1862, the State Engineer, Hon. Van R. Richmond, arrived at the same conclusion and calculated the capacity of the canal sufficient to transport to tide water 5,220,000 tons, and the testimony of all the engineers in the employ of

§ 14. Except the debts specified in the twelfth and thirteenth sections of this article, no debts shall be hereafter contracted by or on behalf of this State, unless such debt shall be authorized by a law for some single work or object to be distinctly specified therein; and such laws shall impose and provide for a collection of a direct annual tax to pay, and sufficient to pay the interest on such debt as it falls due; and also to pay and discharge the principal of such debt within eighteen years from the time of the contracting thereof.

No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election.

On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the Journals thereof, and shall be: "Shall this bill pass, and ought the same to receive the sanction of the people?" The Legislature may, at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same, and may at any time, by law, forbid the contracting of any further debts under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrevocable and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability.

The money arising from any loan, or stock, creating such debt or liability, shall be applied to the work or object specified in the act authorizing such debt or liability, or for the repayment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage, or at any general election when any other law, or any bill, or any amendment to the Constitution shall be submitted to be voted for or against.

§ 15. Every law which imposes, continues or revives a tax, shall distinctly state the tax and the object to which it is to be applied; and it shall not be sufficient to refer to any other law to fix such tax or object.

§ 16. No deficiency loan shall be made by or on behalf of the State for a longer period than is necessary to enable the sinking fund, provided for its payment, to accumulate an amount sufficient to discharge it; and in no case shall such loan be made for more than six years.

§ 17. The capitol of the State is hereby permanently located at the city of Albany, but the rebuilding of a new capitol shall not be undertaken within ten years from the adoption of this Constitution, nor shall any money be hereafter appropriated for that object until the expiration of that period.

Mr. CHURCH — I am obliged to ask the indulgence of the Convention to permit me to read the explanations of the report myself.

Mr. CHURCH proceeded to read the explanations, as follows:

The Committee on State Finances, etc., in the

article proposed have endeavored to accomplish the following leading objects:

1. To simplify the State finances so that every citizen of ordinary understanding will be able to comprehend from the article itself the financial condition of the State and the arrangement made to pay the debts, regulate the expenses, and dispose of the revenues.

2. To provide for the certain payment of the outstanding debts within a limited period, to fulfill the obligations of the present Constitution and preserve perfectly the public faith.

3. To prohibit the creation of debts in future for any purpose or object whatever, except for protection against invasion or insurrection or defense in war, unless the same shall receive the affirmative sanction of the people.

4. To restrict the Legislature in the appropriation of public moneys to the necessary purposes of a proper administration of the State government—to reduce taxation and thus relieve the labor and industry of the State, as far as practicable, from the excessive burdens now resting upon them.

The outstanding debts, for which the canal revenues are pledged, amount to, ..... \$21,407,682 23  
There will be in the sinking funds on the 1st of October, 1867, applicable to the payment of said debts, the sum of, ..... 2,755,595 00

The payment of these debts is first provided for out of the revenues of the canals, by section 3. of the proposed article, in substantial compliance with the provisions of the present Constitution, but varying somewhat in the detail of accomplishing the object. Instead of separate sinking funds for each debt constituting the foregoing amount, the committee have provided a single sinking fund for the payment of all of said debts into which the whole net revenues of the canal are to be paid until the whole debts are fully discharged, which will be in the year 1878, estimating the net revenues at \$2,418,000, the average for the past ten years; and that is the period when the said debts would be paid by the terms of the present Constitution upon the same estimate of revenues.

Said section imperatively requires payment of these debts by the year 1878, and provides for supplying deficiencies by taxation if the revenues fall short of the annual estimates. The advantages of a consolidated sinking fund are, that it enables the State officers to apply any money in the fund to the payment of any of the indebtedness as it matures, and thus obviate the inconvenience of accumulating money in one sinking fund when there is a deficiency in another.

It also prevents the renewal of debts when they might be paid, and saves to the State the loss of two per cent interest upon such accumulations. It will be impossible if the proposed third section is adopted, to extend, by renewal or otherwise, any portion of the foregoing indebtedness beyond 1878, while if the revenues exceed the estimates, they will be provided for at an earlier period, and the revenues released from the obligation for their payment.



stitution itself can easily be amended, as it was in 1854.

But the committee believe that the people ought to insist, and that they will insist upon the reimbursement of the advances drawn from them by taxation.

The financial condition of the State, and the excessive taxation now being imposed upon the people, furnish to the minds of the committee conclusive reasons, if there were no other, against the creation of additional indebtedness. This condition, and the amount of taxes upon the people of the State, will be briefly stated.

The outstanding debts of the State amount to,.....	\$48,351,682 22
The debts of the cities, villages, counties, and towns, .....	85,000,000 00
Making a total of State indebtedness of	\$133,351,682 22
The proportion of the national debt belonging to this State to pay is not less than,.....	500,000,000 00
Making a total of,.....	\$633,351,682 22

Saying nothing of the unascertained national indebtedness, which high authority has placed at the same amount.

The highest assessed valuation of all the property in the State is \$1,639,432,615; from which it will be seen that this State is permanently indebted to considerably more than one-third of the assessed value of the property therein.

The annual taxation is very much larger than even the permanent debt would indicate.

Direct taxation by the State,.....	\$12,800,000
Direct taxation by counties and towns,...	82,000,000
Direct taxation by cities and villages, estimated,.....	18,000,000
	<u>\$62,800,000</u>

#### INDIRECT TAXES.

The whole amount of Internal Revenue received by the United States Government during the fiscal year ending 1st July, 1866, was \$310,906,984, of which this State paid in fact one-fourth, but say one-fifth,.....

The amount collected by the tariff was nearly \$200,000,000, of which the people of this State must have paid, as consumers, one-fifth, amounting in the aggregate to \$40,000,000 in gold, which is equal in currency to,.....

Making an aggregate of annual taxation of, .....	\$180,181,898 00
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which is more than eleven per cent on the assessed valuation of property, and equals a tax of \$45 upon every man, woman and child in the State, and more than \$200 upon every voter.

If this excessive annual taxation should be capitalized, it would require the sum of \$3,000,000,000 at six per cent to pay it, which is \$1,400,000,000 more than the assessed value of the whole property.

If, therefore, the present amount of taxation is to be regarded as permanent, and cannot be materially reduced, the unwelcome truth must be acknowledged, that the property of the State is mortgaged to more than the amount of its full value.

It is estimated that three and one-half per cent upon the value of property, is a liberal allowance for the net profits of the people.

This brief statement shows that taxation has reached a point largely beyond the entire net earnings of the whole people, and is absorbing the capital with fearful rapidity. No argument is needed to establish the fact that such an extent of taxation cannot be permanently endured. It is no longer a matter of choice but of ability. The people have borne these exactions with unexampled patriotism and patience, but they have a right to demand, and your committee believe do demand from this Convention, some alleviation from present, and protection against future burdens.

The proposed measure will prevent, to the extent of the debt created and the interest thereon the application of the sums to be returned to the treasury for the advances to the canals, in reducing taxation. The policy adopted in the proposed article commends itself to the committee on the ground, also, of prudence and safety, as a protection against any unforeseen misfortune or disaster affecting the business interests of the country. No one could have anticipated that the short space of seven years would have changed the condition of the people of New York from that of comparative freedom from taxation to the most overburdened and heavily taxed people in the civilized world. The last war increased the business of our canals by blockading other channels of communication; the next war may blockade the canals themselves. Pestilence or famine may come upon us, withering the very sources of our prosperity, and the only path to financial safety lies in the direction of prudence and rigid economy.

The question for New York is, whether she will endeavor to check the spirit of extravagance and lavish prodigality, so prevalent in public and private affairs, by rigid financial provisions, which will insure the practice of economy and the observance of plighted public faith; or whether the great power of her influence shall be used to swell the force of that advancing tide, which threatens to submerge public and private credit, and bankrupt every business interest of the country.

The committee have retained all the restrictions upon the Legislature, with reference to appropriating public money, contained in the present Constitution, and have added some others.

They propose to prohibit the Legislature from imposing any tax upon the people for works of internal improvement. The committee believe that the time has arrived for the enforcement, by constitutional provisions, of a principle which has always been recognized in this State. The present canals of the State can be kept in repair from their revenues, and if extensive improvements or new works shall be hereafter authorized, they should be constructed with current revenues, or by the creation of debts contracted in pursuance of the Constitution.

The committee have also introduced a provision prohibiting the Legislature from giving or loaning the money or property of the State. This provision will be, it is believed, most salutary, and will result in a large saving to the people annually. It involves a general principle, applicable to numerous cases which have heretofore occurred, absorbing large sums of money,

the State has been entirely uniform since this subject has been agitated, and there is now, and will be for an indefinite period in future, abundant capacity in the Erie canal to transport all the property which will be brought to it; and as far as the committee have been able to ascertain, this is corroborated by those who are engaged in the practical business of navigating the canals. Some complaint has been made by the latter, that the canals are not in good repair, but they have never experienced any want of capacity.

The Auditor of the Canal Department in several reports to the Legislature, has demonstrated that the Erie canal is capable of transporting 4,000,000 of tons each way, estimating the longest period for passing a lock which has ever been claimed, while the greatest quantity ever transported one way was 2,916,094 tons, and that was in 1862, and a little less in 1863, in both of which years the business was largely increased in consequence of the war and the blockade of the Mississippi and other western and southern routes of transit.

But the Auditor says in his report of 1866: "We know the fact by experiment, that a boat can be passed through a lock in good order and well attended in a considerable less time than five minutes," and then shows upon that basis of five minutes, that the canal is capable of transporting 6,393,600 tons each way, which is considerably more than double the quantity brought to tide water in the exceptional year of 1862.

In speaking of those who claim that the capacity of the canal is overtaxed, the Auditor says: "When the subject is examined, disregarding local interests and other considerations always involved in the expenditure of public moneys, we shall find these speculations are mere chimeras, and that these fears will dissipate as idle wind." Every member of the Convention can easily examine for himself the basis upon which these calculations have been made, and the committee do not deem it necessary to incorporate the details into their report.

If the trifling expense of increasing the attendance upon the locks will add so much to the facilities of navigation, the committee assume that this course will be adopted whenever a necessity for it shall occur. The committee are entirely satisfied, that if temporary embarrassments have occurred at times when business was most crowded, they are attributable more to the want of thorough management, than any want of capacity.

Nor can the policy be justified on the ground of cheapening transportation. The tonnage on the canals is now transported for less than one-half the price of the tonnage on the railroads of the State, and if price alone determined the route, the canals would supersede all other means of transportation. But the committee believe that the increase of indebtedness would tend to perpetuate present prices of transportation, if it did not increase them. The increase of debt insures the continuance, if not the increase, of tolls upon property transported, and these tolls are a tax upon the commerce passing over the canals and add to the cost of transportation.

Your committee are persuaded that a reduced

cost of transportation can be more certainly effected, by paying the existing canal debts, and reducing the tolls to such a nominal amount as will be necessary to keep the canals in good repair, than by piling up the debts, and rendering it necessary to continue or increase these large exactions.

In round numbers, the tolls amount to about one-third of the price of transportation on the canals, and if they could be removed, the canals would be placed in a condition for successful competition, superior to that to be attained in any other manner. Freedom from debt, and comparative freedom from tolls, constitute a policy which the State should permanently adopt in reference to the canals, and from which it should never have departed. Since the commencement of the enlargement, the surplus revenue of the canals has amounted to \$61,307,917.07, while the whole amount expended upon all the canals has been only \$52,610,551.41, showing that sufficient revenues have been received to have accomplished all that has been done—paid off the debt of six millions existing at the commencement, and nearly, if not quite, repaid all advances which had been made, and then have left the canals comparatively free from debt, and the commerce passing over it free from taxation.

The debt policy has absorbed more than one-half of all the net revenues, in the payment of interest on loans, to say nothing of the loss of large sums necessarily consequent upon the hurried expenditure of large amounts of money within short periods of time, and the occasional depreciation of the credit of the State.

It should be borne in mind in this connection, that the financial article presented by the committee is so arranged that the outstanding canal debts will be paid in eleven years, and if the revenues equal the average of the past seven years, they will be paid in nine years, and then if it should be desirable to reduce tolls so as to cheapen transportation, or for any other reason, it will be in the power of the people, through the Legislature, to do so, and thus prolong the time for the payment of the advances into the treasury. On the other hand, if the tolls are continued, the advances will be rapidly discharged, and the revenues freed from all charge or incumbrance. Either course may be made to result in a free channel of communication for all the commerce seeking transit through the State to the sea-board.

If the necessity for this measure was more pressing than your committee believe it to be, and if the policy and utility of it were more apparent, your committee would not consent to violate the constitutional pledge for the repayment of the advances before mentioned, without the clearest evidence that the people demand it. So far from this being the case, every indication of public sentiment invites and demands relief from the burdens of taxation.

Besides, the Constitution will contain ample provisions for the accomplishment of the proposed object, if it shall hereafter become necessary, or for any reason desirable.

The proposed article enables the people at any time to incur a debt for any purpose, and the Con

The PRESIDENT — The report will be referred to the Committee of the Whole and be printed.

Mr. HATCH — I desire to submit a minority report from the committee, which I will ask the Secretary to read:

The SECRETARY proceeded to read the report, as follows:

The undersigned, approving many of the positions taken by a majority of the committee, respectfully presents the following as a statement of some of the considerations which have prevented entire concurrence in the conclusions of the majority.

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The amendment recommended in the majority report applies the revenues of the canals, after deducting the cost of superintendence and ordinary repairs, for a period of above eleven years (until October 1, 1887) to the payment of the canal and general fund debts in the aggregate \$21,417,681.22; and after that period appropriates for the general purposes of our State government the same net revenue to the payment of the \$18,007,287.68, the sum of the advances to the canals since 1846, and the interest thereupon—a sum arrived at, however, upon the questionable basis adopted by the majority of the committee.

The policy thus recommended is the total opposite of that which has existed ever since the canal system of the State had its inception. It involves an entire cessation of that gradual enlargement and improvement of the canals which hitherto has been the general policy of the State, which has built up the canals, made them a splendid financial success, and poured through the State the great channels of internal trade, accompanied with incalculable consequent advantages. To the undersigned, it is plain that such a change is worse than retrogressive. It is experimental without progress. It substitutes for a system most successfully tried through every vicissitude of financial and political change, an untried policy. It substitutes for a system of growth and such development as has enabled our canals to almost keep pace with the requirements of commerce, a system of inactivity, most unmasterly, so to speak, for the reason that cessation of improvement for so long a period as that contemplated by the report of the majority of the committee, in this age of rapid progress, of shift and fluctuation in the channels and eddies of trade, of very necessity implies failure to meet the increasing requirements of the times, involves decay, and it well may be the utter failure of the great scheme of the State canals. In this great century of progress, the undersigned cannot regard that as an enlightened policy which shall, for eleven years, stop in its mid career of success the great scheme which has so long been the pride of the State, and thus afford the only possible opportunity for successful rivalry to contending routes and opposing views.

In the view of the undersigned, the greatest questions of State or even national policy are to be found in the unprecedented growth of the inland commerce of the country; and in consideration of the comparative advantages, disadvantages, capacities and claims of the various actual and possible lines of transit across the continent.

In the view of the undersigned, the canals of the State, as they have hitherto formed, in the future should form, in connection with the western lakes and with the Hudson, a most important link in the most practicable line across the whole continent. In the view of the undersigned, the enlargement of the capacity of the trunk canal, and the improvement of those lateral canals, the revenues and local traffic of which would hereafter pay for the improvement, is so entirely in consonance with the long tried policy of the State, and is absolutely demanded by the necessities of the immediate future and even of the present, that it would be worse than temerity to adopt the fundamental change recommended by the majority of the committee.

Entertaining these views, the undersigned cannot, with any regard to duty, avoid some expression, brief as the magnitude of the considerations will admit, of the reasons which compel dissent from the majority report, and some allusion to the history of the past which can best teach wisdom for the future.

The construction of the Erie canal was commenced in 1817. It was open for transportation of property in 1825. From the very commencement, the national character of the work was recognized, and it was foreseen that a navigable communication between lake Erie and the Atlantic ocean would promote, to use language then employed by the Legislature, "agriculture, manufactures and commerce between the States." The experience of almost half a century has fully approved the statesmanship which originally adopted our canal policy, which was to improve the natural advantages of our geographical position—to pass through our State the then undeveloped commerce of the West, and gradually to improve the facilities afforded to a degree requisite to meet the requirements of its growth.

The sagacity and foresight of the early friends of the Erie canal enabled them to see clearly in the future the necessity which would require this commercial highway. It was a gigantic enterprise, and only those who have studied the history of the times are able fully to appreciate its magnitude. Once completed, it immediately gave promise of future success, and comparatively little difficulty was found in securing its enlargement. So plain was the necessity, and so palpable the benefits which it conferred, that the work was pushed forward with enthusiasm. Of course, the patronage attending so large an expenditure of public money was accompanied by the usual amount of corruption, from which no government has ever yet been exempted, for no pure government has ever yet existed on this earth, except in the dreams of such visionaries as Sir Thomas Moore, in his Utopia.

Unable to oppose the popular tide of sentiment which had set in favor of speedy enlargement, localities distant from the trunk line sought to take advantage of it for selfish ends, and the lateral canal system was engrafted upon the original policy. From this date arose most of the difficulties with which the Erie canal has since had to contend. Canals of doubtful utility were projected and forced upon the acceptance of the State as concessions to local interest and to silence oppo-



and to others hereafter occurring, which, without this provision, would be deemed proper objects for State aid or bounty. Nothing is more dangerous or more corrupting than the practice which has lately prevailed of appropriating money for the benefit of railroad corporations, and taxing the people to supply the means.

It can be justified on no principle, and is usually made successful by a combination of influences in favor of different projects, without much regard to the merits of any.

The committee have felt some embarrassment on account of the necessary effect of this provision, in cutting off all appropriations for charitable purposes, except to such institutions as the State itself owns and controls.

But the practice of taxing the whole people of the State, for the support of local charities, operates unequally, and cannot, as your committee believe, find a justification in any sound principle of public policy.

The committee have therefore concluded to submit the provision, prohibiting all appropriations of this character, and leave to the judgment of the Convention, the question whether any modification shall be made in the respects referred to, or not.

The committee have considered the question, which has been for some time agitated, of rebuilding the capitol. The last Legislature appropriated the sum of \$250,000 for that purpose, and limited the expense to four millions of dollars. The committee are satisfied, however, that this sum will fall far short of accomplishing the object, and that an annual tax of one million of dollars at least for ten years will be required. Although the present structure is inadequate, in some respects, to accommodate the growing wants of the State, yet it is sufficiently ample and commodious for present public purposes; and in view of the high price of every element involved in its structure, and to save an overburdened people from additional taxation, the committee have concluded to recommend the suspension of the work for ten years, by which time the public debts will either be paid or so materially reduced as not to be oppressive. The committee have, as well to prevent future controversy as in justice to the people of Albany who have contributed to this object, incorporated a provision permanently locating the capitol at the city of Albany.

The committee cannot refrain from remarking in connection with the subject of restrictions upon legislative power, that they have found it extremely difficult to draw the line between unalterable prohibitions and that discretion which must of necessity be reposed in the Legislature. They have selected classes of appropriations which they believed might be entirely cut off, and yet within the remaining powers improper and extravagant appropriations may be made, not within the competence of constitutional provisions to prevent, without impairing the usefulness of the legislative body.

The only effectual remedy for perfect fidelity in the representative, must be applied by the people themselves.

It is their duty to inform themselves of the manner in which public trusts have been dis-

charged, and to hold representatives to a rigid accountability for their conduct. When this shall be done, there will be no occasion to complain of corrupt or even improper legislation.

Aside from canal revenues, the State has no permanent revenues, except the inconsiderable sums derived from auction and salt duties, and these are regarded of doubtful propriety—one being a tax upon the most common necessary of life, and the other upon trade and commerce. The State has received but little more than \$100,000 annually, from both these sources, on an average for the past twenty years. All other means are obtained by direct taxation upon the property of the State.

The expenses of the State government have increased from \$750,000 in 1846, to \$3,500,000 in 1866—an increase far beyond any public necessity, and attributable only to that spirit of extravagance not to say corruption, pervading the administration of public affairs.

If the article proposed by the committee shall be adopted, the committee estimate that direct taxation will be reduced at once, about six millions of dollars annually.

The committee have not considered the subject of the proper principles of assessment and taxation, which was referred to them, and they also desire to present a provision on the subject of claims by individuals against the State, and beg leave to continue their labors upon these subjects.

All of which is respectfully submitted.

S. E. CHURCH,

*Chairman,*

GEORGE OPDYKE,  
AUGUSTUS SCHELL,  
WM. C. BROWN,  
H. A. NELSON,  
J. HARDENBURGH,  
HENRY D. BARTO.

I approve of the article and report, except the provision suspending the rebuilding of the capitol.  
ERASTUS CORNING.

We concur in the article reported by the committee, with a single reservation. It deals with the canals on the assumption that their present capacity is adequate, and that their enlargement will not be necessary for many years, if ever. Of the correctness of that assumption we entertain a doubt. If the facts, as they are now in course of full and authentic ascertainment under a resolution of the Convention, shall not justify the assumption on which the reported article is based, we shall desire its modification to meet any ascertained necessity, near or more remote, for the enlargement of the canals.

JOSHUA M. VAN COTT,  
AUGUSTUS FRANK,  
B. P. CARPENTER,  
A. F. ALLEN.

ALBANY, August 7, 1867.

Mr. CHURCH—I ought to state that the gentleman from Erie [Mr. Hatch] dissents from the report of the committee; and also that the gentleman from Monroe [Mr. Clarke] desires to make an additional report.

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sition. They thus became burdens upon the trunk canal; and when the Erie canal was no longer able to bear these burdens, taxation followed, and with it has arisen an unjustifiable and indiscriminating clamor against all our canals.

The policy thus adopted, and partially carried out, loaded the State with an enormous debt, and diverted the revenues of the Erie canal to the support of the unremunerative branches. The people have lost sight of this fact, and have justified an opposition to the whole system by the expense and taxation chargeable solely to the lateral canals. The wise development of our original canal policy is now threatened with destruction from a misapprehension of facts or an interested antagonism.

Every State has undoubted right to indemnify itself for the money it has advanced and the risk it has run in making any canal or road, by levying sufficient tolls on the articles of which it has thus facilitated the transit. It is impossible to imagine any more equitable method of levying a tax. The owner of the property thus passing to market profits by the transaction. But there is an obvious and important distinction between works belonging to individuals and those of which the State is the owner. In private companies carrying goods or making canals or roads, there is a right to make whatever profit can be made on freight or tolls. The principle of competition ordinarily checks undue extravagance or extortion in their charges. But in such a case as that of the Erie canal, the State has within its own limits virtually no competitor of the kind. If it levies tolls for profit, either to defray the expenses of the State or to be expended for any other purpose than those of the canal itself, tribute is in reality exacted from the people of other States, on the same principle as if tolls were levied on property carried through its domains by private companies. Such a State exacts money by the force of its geographical position.

No one will deny that whatever any single State has a right to do in this way, others have an equal right to do toward it. The Constitution of the United States wisely provides for freedom of commerce upon all the rivers and lakes. But as our country became more generally cultivated and more densely peopled, many lines of railroad and canal have been made, and the navigation of many rivers has been improved or completed by links of railroad or canal. A very large amount of the transit of property and passengers depends upon the connections made by the enterprise and labor of man. The question annually assumes proportions of greater magnitude. It becomes evident that unless some general rule or principle of action is adopted, results may ensue detrimental in the highest degree to that free commerce between the States on which the welfare of all so much depends.

Before the adoption of the Federal Constitution and in colonial times, embarrassments and restrictions upon internal trade similar in effect to these existed. The evil was of so great magnitude as to form a controlling reason for the adoption of a national Constitution, by which commerce between the States might be regulated and controlled. The

whole spirit of the Constitution, as well as State and national policy, required that invidious measures should not be adopted in any State, and that each State, in this view most especially, should regard itself as but a part of the great whole—a part of a great nation, the prosperity and harmonious development of whole and part, in a most important measure, dependent upon substantial freedom in commercial communication of each with all the others.

The unprecedented development of this inland commerce can be briefly stated. No longer ago than 1825, the trade of the lakes was transacted in a few schooners of only thirty or forty tons. The arrivals and departures from Buffalo were only sixty-four. Last year the arrivals and departures were 14,000; the value of property passing through Buffalo, \$256,000,000.

If we regard alone the statistics of the census reports as to the population, productions and resources of Ohio, Indiana, Illinois, Missouri, Iowa, Minnesota, Wisconsin and Michigan, we are led to surprising results. In 1850, their population was only 5,403,595. Ten years later, in 1860, it had advanced to 8,955,962, having increased at the rate of 65.74 per cent in the brief space of ten years. At the same rate of progression they will, in 1870, have a population of 14,833,401; in 1880, it will be 24,584,878; and at the approaching termination of the present century it will amount to 66,788,208. So little have their resources been hitherto developed that, unless interrupted by the devastations of war, we may reasonably expect the present ratio of increase to be continued until the latest period here indicated. They have an area of 284,992,640 acres, of which little more than one-sixth has yet been brought under cultivation. In 1850, they produced 310,384,775 bushels of grain, including 43,842,038 bushels of wheat, and 222,208,502 of corn. In 1860, this product had been increased to 557,551,811 bushels, including 89,293,603 bushels of wheat, and 392,289,751 of corn. These eight food-producing States yielded more than 550,000,000 of cereals in 1859, a crop which was nearly one-third deficient in comparison with those of 1860 and 1861. The mind scarcely realizes the magnitude of quantities thus represented in abstract figures.

Beyond the chief region now known as the great grain producing States, but including Minnesota, Dacotah, and the Red river country, is a vast territory, well watered, possessing a sufficient supply of timber, of exceedingly fertile soil, peculiarly adapted to the production of wheat, yielding, for many years in succession, crops of such abundance as are scarcely credible to the inhabitants of less favored regions.

It is stated on competent authority that an area of not less than the whole of the United States east of the Mississippi exists west of the 98th meridian and above the 43d parallel. This region is now almost wholly unoccupied, but is perfectly adapted to the fullest occupation by civilized man. Spring opens about the same time along the vast expanse of plains stretching from St. Paul's to the Mackenzie river, a distance as great as that from St. Paul's to the southern extremity of the long peninsula of Florida, as far as from



the most southerly point in the territory of the United States to Augusta, the central port in Maine.

The capacity of these vast regions when brought into practical connection with market and seaport, by rail, canal, or other artificial improvement, to increase the bulk of the cereal products of the country can be best illustrated by referring to a single instance of the kind among the many stated in the report made last winter by Gen. Warren to Congress, on the rivers and the proposed improvement of the Upper Mississippi. He reports that by constructing a canal thirteen miles long Cannon river can be connected with the Minnesota river, and a navigable channel thus established which would open to settlement and cultivation an area of land of 844,800 acres, two-thirds of which would be tillable, which would produce annually 20,000,000 bushels of grain—a productiveness which, according to another estimate in the same report adopted by him, deducting 4,000,000 bushels for consumption at the places of growth, would leave 16,000,000 for exportation to our eastern market.

A region is above described many times larger than that tributary to the commerce of Chicago, which will send its products to the eastern markets through ports near the western end of Lake Superior, their chief transit being by way of the lakes and by the Erie canal, through the State and to the city of New York, using the canal to the utmost possible capacity of its enlargement. Railways are now being constructed from St. Paul to the head of Lake Superior and to Pembina, on the borders of the British possessions. The numerous chains of lakes capable of being connected by short lines of canal with Lakes Winnipeg and Superior are a remarkable feature in the formation of this country. Five railroads, at least, are projected, and will probably soon be completed, connecting the great lines of traffic and transit in the interior with the head of Lake Superior.

It is not only with these regions that we shall soon have an extensive commerce. The Northern and Central Pacific railroads, as well as cheaper means of transit by water, or partly by rail and partly by water, will connect us with the Pacific coast. The incalculable value and rapid development of the rich mines of gold and silver and other metals, in the Rocky Mountains, extending nearly to the Pacific Ocean, and from north to south throughout the entire continent, promote with unprecedented rapidity the settlement of regions many hundreds of miles beyond those known within a few years as the "Far West." Beyond all these is the Pacific Ocean itself, already traversed by steamers from San Francisco to the vast and populous regions of the Orient, whose trade has always been and is to-day the great desideratum of the European nations.

It is a well known law of trade that it seeks the cheapest avenues of transportation to its centers, insurance and interest on capital covering risks, and time, being elements of cost. This consideration must bring over our Pacific railroads the trade of India, China, Japan, and the adjacent regions, and lead to the further conclusion that the eastern termination of these roads

must be on the great lakes, so as to appropriate the benefits offered by cheap navigation on the way further east.

Already the extension of telegraphic facilities in China is the sure forerunner of internal railway communication which will revolutionize the society of that country, and enormously increase its foreign trade.

Some idea may be formed of the magnitude of the trade we shall acquire with those oriental nations from the fact that Japan alone has a population computed to be 35,000,000. Hindostan contains 160,000,000 of human beings, and the Chinese empire, with its enormous territory, and 367,000,000 of people, contains a greater amount of inhabitants and wealth than are elsewhere united under any one government. And to this may be added those populous regions, full of the most migratory races in Asia, between China and the Amoor river, where American enterprise has already penetrated, and from which Genghis Khan and Tamerlane descended with their immense armies to conquer the world.

But the most important consideration remains to be noticed—the addition to our national wealth, and the rapid development of our inland commerce which must be produced by the introduction into our country of the exhaustless supply of the laboring element of Asia. The immigration of the Mongolian races has already commenced. Thousands are already working in the fields and mines of our Pacific States and territories. The extent of this immigration can only be estimated by considering the swarming millions which this ancient hive of mankind has sent over the face of the earth. They are moving in an easterly direction as our Pacific railroads are constructed, and when these railways are completed, connecting with all our natural and artificial lines of transportation running to the Atlantic, who can doubt but what this immigration will move on, filling up our vast unoccupied area of the interior, their industry developing our inland commerce with a rapidity never known except in our own wonderful history. No difference in climate can prevent any such immigration, as an examination of the isothermal lines, traced from continent to continent by careful observations, made by the most scientific men, will show. Peking, San Francisco and New York, well to the northward in their respective countries, are of about the same temperature or on the same isothermal line, each about the fortieth degree of latitude. New Orleans and Canton are in the same isothermal line, well to the southward; Canton being, however, some eight degrees further to the south than New Orleans. Acclimation in the respective countries upon the same isothermal line will necessarily be easy, and no difficulty in the nature of things can exist in the development of our vast natural advantages in all that development which results in the greatest social, State, and national prosperity, through the employment of the millions which the growth of our means of transit will afford. Adam Smith, in his inquiry into the nature and causes of national wealth, finds the solution of the economic problem in the "annual labor of every nation," and the product of labor.

The increase of national wealth to be accomplished through the labors of nations thus to be won and added to the immeasurable natural advantages afforded through undeveloped territory, stretching through so many degrees of latitude, far transcending even the conceptions of man. History can afford no approach to its parallel, for no other nation has ever possessed a title of such undeveloped resource, with such opportunity for its development. Nor upon any limited scale can the past even hint at the possibilities of a future here indicated. An undeveloped empire invites the co-operation of millions, eager for employment, and invites that co-operation through means known only to the modern day—through the instrumentality of steam, and all the great inventions and improvements which so facilitate modern progress.

In estimating our inland commerce and transit, we must soon include the great overland trade and travel between Europe and Asia. At New York the various products of all these regions will meet shipping from the eastern ports of the Atlantic, and the multiform products of the machinery of Europe, and of the industry and ingenuity of her people, as well as of our own, will in return be diffused throughout our continent and into Asia.

The central position of this continent, midway between Europe and Asia, makes our territory not only the highway for our own trade, but the great thoroughfare for the world, and at no distant time our metropolitan center will become the city of the world's commerce.

The ability of the Erie canal to meet the requirements of this vast and growing inland commerce can be best ascertained by stating its assumed maximum capacity for downward freight, 4,000,000 tons. To pass this large tonnage a boat must go through the Alexander lock (the recognized standard of tonnage of the Erie canal), every ten minutes during every day and hour of the season of navigation, irrespective of breaks or detentions. The annual tonnage of the Erie canal, from this and other States, for the last decade, is as follows:

YEAR.	From Western States, tons.	From this State, tons.	Total tons.
1855,.....	1,002,876	327,839	1,430,715
1856,.....	1,212,550	374,580	1,587,130
1857,.....	918,993	197,201	1,117,199
1858,.....	1,273,099	223,588	1,496,687
1859,.....	1,036,631	414,699	1,451,333
1860,.....	1,896,975	379,086	2,276,061
1861,.....	2,158,425	291,184	2,449,609
1862,.....	2,594,837	322,257	2,917,094
1863,.....	2,279,252	398,437	2,677,689
1864,.....	1,907,136	239,498	2,146,634
1865,.....	1,903,612	173,538	2,077,150

If the local or internal traffic of the State is added to the through downward tonnage, the above amounts are largely increased. It is ascertained that in 1862, this item increased the ton-

nage to tide-water over 3,390,399. It is also a well known fact that when this amount of tonnage is pressed upon the Erie canal for transit, it creates detentions, increases price of freight, and large portions of western commerce are diverted into cheaper and speedier rival channels of transportation. No one could estimate the loss of tonnage at such times to the Erie canal less than half a million or more. The forthcoming testimony taken by the Canal committee in relation to the capacity of the Erie canal, will confirm these statements if anything more is required. In order to retain the western trade to the Erie canal, we must accommodate it with a more ample and cheaper transit. The tables of the statistics of the tonnage of the Erie canal, show that in every decade this tonnage has been doubled; and in the present capacity of the Erie canal, as is claimed by some, is now adequate, are we not imperatively called upon to make some provision for increase, to meet the demands of the future? The population and productions of the west, and the tonnage of the Erie canal, as has already been shown, have doubled in every decade for the last twenty years. No one can doubt but what this ratio of progress will be continued in the future, with a proportionate increase of revenues from the Erie canal, without we abandon our past wise canal policy. The necessity of the enlargement, and the means through which it can be accomplished by the application of the revenues of the Erie canal, have been so fully and so recently set forth and recommended in Governor Fenton's message, which is sustained in other official documents from the Comptroller, Auditor, Canal Commissioners and State Engineer, that it does not seem necessary to add to them. If their views are correct, the cost of transportation would be reduced, by a further enlargement of the Erie canal, one-half. There is no doubt that the increased traffic which would be invited to the Erie canal would enable the State to reduce the tolls, in a few years, one-half, and still leave an increasing surplus every year to pay off the present canal debt, with the additional debt to be paid from the revenues for immediate improvement; and then, if it must be so, pay back to the State the taxes which the people have paid for our unremunerative lateral canals—the bad investments of the State made to promote the interests of political parties or the ambitious schemes of politicians.

The Erie and Champlain canals have paid into the treasury the sum of \$192,455,779.57, leaving a balance to their credit of profit and interest, above the cost of construction and maintenance, and all other expenses and charges, of \$23,108,326.01.

Add to the above debt of the Champlain canal, as appears by the Auditor's reply to an inquiry by the committee, \$2,943,089.92, and this would make the Erie canal a contributor to the State treasury from its surplus after paying for cost of construction and all other charges, \$26,651,415.93. The inquiry naturally arises who paid these millions of tolls? An examination of the amount of the tonnage on the Erie canal for the last decade will show that they were mostly paid by the people of the Western States for the transportation of their

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The increase of national wealth to be accomplished through the labors of nations thus to be won and added to the immeasurable natural advantages afforded through undeveloped territory, stretching through so many degrees of latitude, far transcending even the conceptions of man. History can afford no approach to its parallel, for no other nation has ever possessed a title of such undeveloped resources, with such opportunity for its development. Nor upon any limited scale can the past even hint at the possibilities of a future here indicated. An undeveloped empire invites the co-operation of millions, eager for employment, and invites that co-operation through means known only to the modern day—through the instrumentality of steam, and all the great inventions and improvements which so facilitate modern progress.

In estimating our inland commerce and transit, we must soon include the great overland trade and travel between Europe and Asia. At New York the various products of all these regions will meet shipping from the eastern ports of the Atlantic, and the multifarious products of the machinery of Europe, and of the industry and ingenuity of her people, as well as of our own, will in return be diffused throughout our continent and into Asia.

The central position of this continent, midway between Europe and Asia, makes our territory not only the highway for our own trade, but the great thoroughfare for the world, and at no distant time our metropolitan center will become the city of the world's commerce.

The ability of the Erie canal to meet the requirements of this vast and growing inland commerce can be best ascertained by stating its assumed maximum capacity for downward freight, 4,000,000 tons. To pass this large tonnage a boat must go through the Alexander lock (the recognized standard of tonnage of the Erie canal), every ten minutes during every day and hour of the season of navigation, irrespective of breaks or detentions. The annual tonnage of the Erie canal, from this and other States, for the last decade, is as follows:

YEAR.	From Western States, tons.	From this State, tons.	Total tons.
1862, .....	1, 78	8	1,480,715
1864, .....	1, 50	0	1,587,130
1867, .....	1, 88	1	1,117,109
1869, .....	1, 80	1	1,494,697
1870, .....	1, 34	9	1,451,333
1880, .....	1, 75	8	2,276,061
1881, .....	2, 25	4	2,449,609
1882, .....	2, 57	7	2,917,004
1883, .....	2, 53	7	2,647,429
1884, .....	1, 36	8	2,146,034
1885, .....	1, 42	8	2,077,180

If the local or internal traffic of the State is added to the through downward tonnage, the above amounts are largely increased. It is ascertained that in 1862, this item increased the ton-

nage to tide-water over 3,390,399. It is also a well known fact that when this amount of tonnage is pressed upon the Erie canal for transit, it creates detentions, increases price of freight, and large portions of western commerce are diverted into cheaper and speedier rival channels of transportation. No one could estimate the loss of tonnage at such times to the Erie canal less than half a million or more. The forthcoming testimony taken by the Canal committee in relation to the capacity of the Erie canal, will confirm these statements if anything more is required. In order to retain the western trade to the Erie canal, we must accommodate it with a more ample and cheaper transit. The tables of the statistics of the tonnage of the Erie canal, show that in every decade this tonnage has been doubled; and if the present capacity of the Erie canal, as is claimed by some, is now adequate, are we not imperatively called upon to make some provision for increase, to meet the demands of the future? The population and productions of the west, and the tonnage of the Erie canal, as has already been shown, have doubled in every decade for the last twenty years. No one can doubt but what this ratio of progress will be continued in the future, with a proportionate increase of revenues from the Erie canal, without we abandon our past wise canal policy. The necessity of the enlargement, and the means through which it can be accomplished by the application of the revenues of the Erie canal, have been so fully and so recently set forth and recommended in Governor Fenton's message, which is sustained in other official documents from the Comptroller, Auditor, Canal Commissioners and State Engineer, that it does not seem necessary to add to them. If their views are correct, the cost of transportation would be reduced, by a further enlargement of the Erie canal, one-half. There is no doubt that the increased traffic which would be invited to the Erie canal would enable the State to reduce the tolls, in a few years, one-half, and still leave an increasing surplus every year to pay off the present canal debt, with the additional debt to be paid from the revenues for immediate improvement; and then, if it must be so, pay back to the State the taxes which the people have paid for our unremunerative lateral canals—the bad investments of the State made to promote the interests of political parties or the ambitious schemes of politicians.

The Erie and Champlain canals have paid into the treasury the sum of \$192,456,779.57, leaving a balance to their credit of profit and interest, above the cost of construction and maintenance, and all other expenses and charges, of \$23,102,326.01.

Add to the above debt of the Champlain canal, as appears by the Auditor's reply to an inquiry by the committee, \$2,943,089.92, and this would make the Erie canal a contributor to the State treasury from its surplus after paying for cost of construction and all other charges, \$26,851,415.93. The inquiry naturally arises who paid these millions of tolls? An examination of the amount of the tonnage on the Erie canal for the last decade will show that they were mostly paid by the people of the Western States for the transportation of their

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A delegate from the sixteenth senatorial district, 979, 1322, 1735, 1736, 1764, 1827, 1843, 2162, 2190, 2550, 3352, 3606, 3688.

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A delegate from the sixteenth senatorial district.

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- A delegate from the twenty-fourth senatorial district, 299, 604, 1790, 2132, 2243, 2604, 2669, 3004, 3238, 3426, 3474, 3925, 3926.
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A delegate from the eighth senatorial district.

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**EDDY, JOHN,**

A delegate from the twentieth senatorial district, 741.

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- A delegate from the twenty-eighth senatorial district.
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- A delegate from the thirtieth senatorial district, 13, 380, 577.
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**FARNUM, EDWARD J.,**

A delegate from the thirtieth senatorial district.

Appointed member of committee on industrial interests, 96.

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A delegate from the twenty-fifth senatorial district, 644, 750, 864, 2171, 2448, 2687.

Appointed member of committee on Secretary of State, etc., 95.

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A delegate from the twenty-third sena-  
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A delegate from the eighth senatorial district, 287, 2908, 2920.  
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A delegate at large.  
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**LAWRENCE, ABRAHAM R.,**  
A delegate from the fourth senatorial district.  
Appointed member of committee in reference to meeting of Convention in New York, 2530.  
Appointed member of committee on preamble and bill of rights, 95.  
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**LEE, M. LINDLEY,**

A delegate from the twenty-first senatorial district.

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